

Arbitration
October 26, 2022

JAMS ARBITRATION

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GARY GREENBERG, et :
al, :
Claimants, : JAMS Reference No.
v. : 1425034873
IAN S. PECK, et al., :
Respondents. :
- - - - - X

Taken Before:

Arbitrator Kenneth Kramer

New York, New York

Wednesday, October 26, 2022

9:59 a.m.

Job No.: 6251236

Pages: 1 - 253

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| <p style="text-align: right;">Page 2</p> <p>1 Reported By: Leonora L. Walker, Court Reporter</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p style="text-align: right;">Page 3</p> <p>1 Proceeding held at the offices of:</p> <p>2</p> <p>3</p> <p>4 JAMS</p> <p>5 620 8th Avenue</p> <p>6 New York, New York 10018</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 Pursuant to notice, before Leonora L. Walker,</p> <p>12 Court Reporter, Notary Public in and for the State</p> <p>13 of New York.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
| <p style="text-align: right;">Page 4</p> <p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF CLAIMANTS:</p> <p>3 LUKE NIKAS, ESQUIRE</p> <p>4 PAUL MASLO, ESQUIRE</p> <p>5 QUINN EMANUEL</p> <p>6 51 Madison Avenue, 22nd Floor</p> <p>7 New York, New York 10010</p> <p>8 212.849.7000</p> <p>9</p> <p>10 ON BEHALF OF RESPONDENTS:</p> <p>11 MATTHEW PRESS, ESQUIRE</p> <p>12 PRESS KORAL LLP</p> <p>13 641 Lexington Avenue, 13th Floor</p> <p>14 New York, New York 10022</p> <p>15 212.922.1111</p> <p>16</p> <p>17</p> <p>18 ALSO PRESENT:</p> <p>19 Dr. Timothy Hunter</p> <p>20 Dr. Robert Simon</p> <p>21 Ian Peck</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p style="text-align: right;">Page 5</p> <p>1 C O N T E N T S</p> <p>2 EXAMINATION WITNESS PAGE</p> <p>3 DIRECT:</p> <p>4 By Mr. Nikas Dr. Timothy Hunter 7</p> <p>5 Gary Greenberg 160</p> <p>6 Ian Peck 219</p> <p>7</p> <p>8 CROSS:</p> <p>9 By Mr. Press Dr. Timothy Hunter 90</p> <p>10 Gary Greenberg 191</p> <p>11</p> <p>12 RE-DIRECT:</p> <p>13 By Mr. Nikas Dr. Timothy Hunter 152</p> <p>14 Gary Greenberg 216</p> <p>15 RE-CROSS</p> <p>16 By Mr. Press Dr. Timothy Hunter 158</p> <p>17 E X H I B I T S</p> <p>18 EXHIBITS ADMITTED PAGE</p> <p>19 Exhibit No. 1 - Settlement Agreement 200</p> <p>20 Exhibit No. 2 - Appraisal 70</p> <p>21 Exhibit No. 3 - Moore Report 70</p> <p>22 Exhibit No. 4 - General Lot Information 80</p> <p>23 Exhibit No. 5 - Sotheby's Page Long Version 83</p> <p>24 Exhibit No. 17- Dr. Hunter's Report 66</p> <p>25 (Exhibits Retained.)</p> |

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| <p style="text-align: right;">Page 6</p> <p>1 PROCEEDINGS</p> <p>2 TIMOTHY HUNTER, called as the witness,</p> <p>3 having been duly sworn by a Notary Public, was</p> <p>4 questioned and testified as follows:</p> <p>5 ARBITRATOR KRAMER: State your full name</p> <p>6 for the record, please?</p> <p>7 THE WITNESS: Yes. My name is Timothy</p> <p>8 John Hunter.</p> <p>9 MR. PRESS: Before we proceed, I need to</p> <p>10 put something on the record. This is Matthew</p> <p>11 Press, on behalf of the respondents.</p> <p>12 During the course of discovery in this</p> <p>13 matter, as you may recall, the respondents learned</p> <p>14 of the prior expert report that had been prepared</p> <p>15 by Winston Art Group of the same painting at issue</p> <p>16 in this procedure. And we made requests for some</p> <p>17 discovery concerning the -- first of all, from --</p> <p>18 testimony from Geza von Habsburg, who is the</p> <p>19 author of that report, and also from Elizabeth von</p> <p>20 Habsburg, who I believe is the wife of Geza, who</p> <p>21 participated in Mr. Hunter's -- Dr. Hunter's</p> <p>22 report, and also discovery concerning how it is</p> <p>23 that the prior report wasn't disclosed in</p> <p>24 Dr. Hunter's report. And we asked for discovery</p> <p>25 concerning that, and you denied the request.</p> | <p style="text-align: right;">Page 7</p> <p>1 We also requested that those two</p> <p>2 individuals be brought in as witnesses in this</p> <p>3 hearing so that we can find out, first of all, to</p> <p>4 discuss the prior expert evaluation by Mr. Geza</p> <p>5 von Habsburg and to understand how that report was</p> <p>6 not acknowledged.</p> <p>7 And so at this time, I am requesting that</p> <p>8 this proceeding either be adjourned so that</p> <p>9 discovery may be obtained or that the hearing</p> <p>10 remain open and that the discovery that was</p> <p>11 requested be provided and that we have the</p> <p>12 opportunity to hear the testimony of those two</p> <p>13 witnesses.</p> <p>14 ARBITRATOR KRAMER: I've denied those</p> <p>15 requests before. I did so in writing in</p> <p>16 connection with the -- I forget which number it</p> <p>17 was. And I will deny them again.</p> <p>18 MR. PRESS: Okay.</p> <p>19 ARBITRATOR KRAMER: I'll just say one</p> <p>20 thing, you have been arguing for a long time that</p> <p>21 it was fraud committed in the report because it</p> <p>22 wasn't disclosed. Now, my understanding of fraud</p> <p>23 is that -- one of the elements of fraud is</p> <p>24 detrimental reliance. I take it that I'm the</p> <p>25 target of the fraud. And since you have the</p> |
| <p style="text-align: right;">Page 8</p> <p>1 report and you're going to be cross-examining</p> <p>2 Dr. Hunter, I don't understand how the target of</p> <p>3 the fraud has been misled, so let's just move on</p> <p>4 from there.</p> <p>5 MR. PRESS: Okay.</p> <p>6 MR. NIKAS: Thank you, sir. May I</p> <p>7 proceed?</p> <p>8 ARBITRATOR KRAMER: Yes.</p> <p>9 DIRECT EXAMINATION</p> <p>10 BY MR. NIKAS:</p> <p>11 Q Good morning, Dr. Hunter.</p> <p>12 A Hi.</p> <p>13 Q Now, if you could tell us, please, your</p> <p>14 educational background after you graduated with</p> <p>15 high school.</p> <p>16 A Right. Well, I went to Oxford University,</p> <p>17 Moreland College, where I read modern history for</p> <p>18 my B.A., which I got a first honors in 1988, and</p> <p>19 then I stayed on to do postgraduate work. First</p> <p>20 of all, I did a diploma in the history of art</p> <p>21 where I got a distinction, and that was my M.A.,</p> <p>22 and then I stayed on to do my doctorate, DPhil we</p> <p>23 call it in Oxford, or a PhD elsewhere, and that</p> <p>24 was in medieval art and literature.</p> <p>25 Q And when did you receive your doctorate?</p> | <p style="text-align: right;">Page 9</p> <p>1 A In 1993, I think it was.</p> <p>2 Q And in the course of your studies, did you</p> <p>3 study Old Master works and artists?</p> <p>4 A Yeah, well, my thesis was on medieval arts</p> <p>5 and literature, many of the 12th and 13th Century,</p> <p>6 so, yeah, early Old Master period. But while I</p> <p>7 was writing my doctorate, I got a job at the</p> <p>8 Ashmolean Museum as the junior curator there, and</p> <p>9 there was a great collection of Old Master there.</p> <p>10 I was working in the department of western art.</p> <p>11 Q Let's move to your you post degree</p> <p>12 professional career.</p> <p>13 A Sure.</p> <p>14 Q If you could, tell us what jobs you had</p> <p>15 following receipt of your doctorate, including</p> <p>16 some more detail on the one you just described,</p> <p>17 and then walk us through to the present day of</p> <p>18 your professional jobs.</p> <p>19 A Okay. It's quite a lot. Well, I started</p> <p>20 as a lecturer and I taught undergraduates at</p> <p>21 Oxford. Then as I said, I got this job at the</p> <p>22 Ashmolean Museum as a junior curator, and I worked</p> <p>23 in the department of western art. I did a number</p> <p>24 of roles there that I was working particularly on</p> <p>25 the picture collection and on the silver</p> |

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| <p style="text-align: right;">Page 10</p> <p>1 collection.</p> <p>2 And then I -- I have been in Oxford a long</p> <p>3 time at that point, so I decided to move to London</p> <p>4 and I got a job at Christie's, in London. And at</p> <p>5 Christie's I had a long and very enjoyable career.</p> <p>6 I was there for 16 years. I did number of things.</p> <p>7 I started in the valuation department where I</p> <p>8 became the associate director and then director of</p> <p>9 the firm. I was a general valuer, providing</p> <p>10 valuations for all sorts of things, sort of</p> <p>11 different houses around the country. And then</p> <p>12 from the valuation department, I moved into the</p> <p>13 picture department, and I was a director in the</p> <p>14 Impressionist and Modern Department. I became</p> <p>15 head of 19th Century European January, and then</p> <p>16 finally I moved into the Old Masters Department,</p> <p>17 which is kind of where my natural inclination was,</p> <p>18 and I became the senior director in the Old</p> <p>19 Masters Department for several years.</p> <p>20 Then in 2009, so after 16 years, I decided</p> <p>21 to leave Christie's, and I got a job at a smaller</p> <p>22 firm called Gurr Johns, that's G-u-r-r Johns,</p> <p>23 which is an art advisory and a valuation firm, and</p> <p>24 I was a director a board member there. And I did</p> <p>25 a lot work in there; in particular, in America I</p> | <p style="text-align: right;">Page 11</p> <p>1 came over to New York and traveled around America</p> <p>2 a lot. We negotiated several pictures to major</p> <p>3 museums here, and I did that until 2014. When I</p> <p>4 left Gurr Johns, I started my own art advisory</p> <p>5 company, which I call Venator Fine Art. And at</p> <p>6 the same time I was also head hunted, if you like,</p> <p>7 by a sitting firm in London who wanted to set up</p> <p>8 an art financing division, a finance firm, called</p> <p>9 Falcon Fine Art. And I accepted that offer. I</p> <p>10 kept my own company going in the background, but I</p> <p>11 was able to -- I became vice president of that</p> <p>12 Falcon Fine Art. And we provided art financing</p> <p>13 for clients in the UK and around Europe. And I</p> <p>14 did that for about four years. And eventually</p> <p>15 they decided to sell that division, and I -- at</p> <p>16 that point I left Falcon, and I just went back to</p> <p>17 running my own business, and that's what I still</p> <p>18 do today, I run Venator Fine Art. And I have</p> <p>19 numerous clients. I do appraisals for them. I</p> <p>20 buy and sell works of art on behalf of clients.</p> <p>21 And I act as a senior consultant for Winston Art</p> <p>22 Group, who are based here in New York.</p> <p>23 Q While holding those positions, did you</p> <p>24 appraise works of art throughout those many years?</p> <p>25 A I did, yes.</p> |
| <p style="text-align: right;">Page 12</p> <p>1 Q And did you appraise works of art by Old</p> <p>2 Masters?</p> <p>3 A I did, yes.</p> <p>4 Q Could you estimate for us approximately</p> <p>5 how many works by Old Masters you appraised across</p> <p>6 that professional career?</p> <p>7 A Wow. So I've been doing this now for</p> <p>8 30 years. And I started in the valuation</p> <p>9 department at Christie's. I've now valued</p> <p>10 thousands of pictures over that time.</p> <p>11 Q In the course of your professional career,</p> <p>12 have you bought and sold works on behalf of</p> <p>13 clients that were painted by Old Masters?</p> <p>14 A Yes, I have.</p> <p>15 Q In the course of your professional career,</p> <p>16 have you advised individuals with respect to art</p> <p>17 financing when Old Masters works were going to be</p> <p>18 used as the collateral for those finances?</p> <p>19 A Most definitely, yes. And particularly</p> <p>20 when I was at Falcon Fine Art, yes.</p> <p>21 Q In the last few years, can you estimate</p> <p>22 how many works you've appraised?</p> <p>23 A Well, it's a huge number. It's hard to be</p> <p>24 precise. I mean, I valued -- I think I calculated</p> <p>25 that I've done -- just for Winston Art Group and I</p> | <p style="text-align: right;">Page 13</p> <p>1 also act for other people, but just for Winston, I</p> <p>2 have done around 170 appraisals, maybe pushing 200</p> <p>3 now. Many of those appraisals consist of multiple</p> <p>4 pictures. Some appraisals number hundreds of</p> <p>5 pictures actually. So it will be well over a</p> <p>6 thousand pictures for just the Winston Art Group,</p> <p>7 I should mention.</p> <p>8 Q Have you ever been hired as an expert</p> <p>9 witness before?</p> <p>10 A Yes, I have.</p> <p>11 Q Have I ever hired you as an expert</p> <p>12 witness?</p> <p>13 A You have never hired me until now, but I</p> <p>14 have been hired by other lawyers, yes.</p> <p>15 Q Have you ever given testimony in a court</p> <p>16 proceeding as an expert witness?</p> <p>17 A Yes, I have.</p> <p>18 Q Have any courts qualified you as an expert</p> <p>19 witness to testify with respect to appraisal?</p> <p>20 A I don't quite understand that question.</p> <p>21 Q Sure. Have you ever been accepted as an</p> <p>22 expert in your profession to testify in a court</p> <p>23 proceeding?</p> <p>24 A Oh, I see. Yes, I have.</p> <p>25 Q Did you prepare an expert report in this</p> |

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| <p style="text-align: right;">Page 14</p> <p>1 case?</p> <p>2 A I did, yes.</p> <p>3 Q If you could please turn to that binder</p> <p>4 you have in front of you, Exhibit 17.</p> <p>5 A Yes, I am there.</p> <p>6 Q If you could please turn to page 46.</p> <p>7 A Yes.</p> <p>8 Q On pages 46 and 47, this section appears</p> <p>9 to be a CV of yours; is that accurate?</p> <p>10 A Yes, it's accurate. I mean, a couple -- I</p> <p>11 probably have another publication to add and</p> <p>12 another expert witness court case to add, but</p> <p>13 otherwise it's accurate.</p> <p>14 Q Does this accurately and generally</p> <p>15 describe your professional experience and</p> <p>16 background?</p> <p>17 A In an abbreviated form, yes.</p> <p>18 MR. NIKAS: Mr. Kramer, I'd offer</p> <p>19 Mr. Hunter as an expert witness to testify in this</p> <p>20 case.</p> <p>21 MR. PRESS: No objection.</p> <p>22 ARBITRATOR KRAMER: Mr. Hunter is accepted</p> <p>23 as an expert witness.</p> <p>24 BY MR. NIKAS:</p> <p>25 Q Now, Dr. Hunter, if you can go back to</p> | <p style="text-align: right;">Page 15</p> <p>1 first page of Exhibit 17, please.</p> <p>2 A Yes.</p> <p>3 Q Could you tell us generally what this</p> <p>4 document is?</p> <p>5 A This is an appraisal, fair market value,</p> <p>6 for litigation purposes, that I produced for the</p> <p>7 matter at hand that we're here to discuss today.</p> <p>8 Q On the first page of this report, it lists</p> <p>9 April 30th, May 1st, and October 31st, 2021.</p> <p>10 Could you tell us what those dates mean,</p> <p>11 please?</p> <p>12 A Yes. Well, as part of the assignment</p> <p>13 instructions, we were asked to provide a value for</p> <p>14 the work of art on these three separate dates.</p> <p>15 It's slightly unusual, but that's not uncommon.</p> <p>16 Q Now, what was the fair market value in</p> <p>17 your opinion of the Andrea del Sarto work that's</p> <p>18 the subject of this litigation?</p> <p>19 A Well, as you can see there on first page,</p> <p>20 my valuation was \$15 million.</p> <p>21 Q On page 6 of your report, Dr. Hunter, it</p> <p>22 says that you made certain assumptions with</p> <p>23 respect to that valuation; is that correct?</p> <p>24 A That is correct.</p> <p>25 Q Did you assume the work was authentic in</p> |
| <p style="text-align: right;">Page 16</p> <p>1 connection with your valuation?</p> <p>2 A Yes, I did.</p> <p>3 Q Did you assume that the sitter, the man</p> <p>4 whose portrait is portrayed in the del Sarto, was</p> <p>5 correctly identified as part of this report?</p> <p>6 A Yes, I did.</p> <p>7 Q Did you assume that the del Sarto was in</p> <p>8 good condition for its age?</p> <p>9 A Yes, I did.</p> <p>10 Q Are you aware that Dr. Robert Simon</p> <p>11 criticizes your report for making these</p> <p>12 assumptions?</p> <p>13 A Yes. I've read Dr. Simon's report, and</p> <p>14 I'm aware of that, yes.</p> <p>15 Q If you could please look at Exhibit 18 in</p> <p>16 your binder.</p> <p>17 A Yes.</p> <p>18 Q This is identified as the report of Robert</p> <p>19 Simon. If you go to the third page -- they're not</p> <p>20 numbered -- there is a title called authorship</p> <p>21 attribution; do you see that?</p> <p>22 A I do see that.</p> <p>23 Q Now, this section says that you rely</p> <p>24 solely on the letter supporting the attribution by</p> <p>25 Dr. Sydney Freedberg; do you see that?</p> | <p style="text-align: right;">Page 17</p> <p>1 A I do see that.</p> <p>2 Q And the ultimate conclusion of this</p> <p>3 section is that the work has not been fully</p> <p>4 confirmed as a del Sarto.</p> <p>5 Do you see that criticism?</p> <p>6 A Yes, I do.</p> <p>7 Q Could you tell us please why you assumed</p> <p>8 as part of your report that the del Sarto you</p> <p>9 valued was authentic or fully confirmed?</p> <p>10 A Well, that was an assumption that I was</p> <p>11 asked to make when I prepared the report.</p> <p>12 Q Do you know the basis for that assumption?</p> <p>13 MR. PRESS: Objection.</p> <p>14 ARBITRATOR KRAMER: Pardon me?</p> <p>15 MR. PRESS: Objection.</p> <p>16 ARBITRATOR KRAMER: What is the issue of</p> <p>17 the objection?</p> <p>18 MR. PRESS: He made an assumption. Why</p> <p>19 does he have to know the basis or argument?</p> <p>20 ARBITRATOR KRAMER: Overruled.</p> <p>21 MR. PRESS: Okay.</p> <p>22 THE WITNESS: Yes, it was explained to me</p> <p>23 that the respondent had represented this was the</p> <p>24 case in the settlement agreement that was entered</p> <p>25 into in January of 2021.</p> |

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| <p style="text-align: right;">Page 18</p> <p>1 BY MR. NIKAS:</p> <p>2 Q If you will look at Exhibit 1, please --</p> <p>3 A One?</p> <p>4 Q -- in your binder.</p> <p>5 A Yes, I'm here.</p> <p>6 Q Please go to the Section 6E.</p> <p>7 A 6E, yes, I see it.</p> <p>8 Q Section 6E, the title of that,</p> <p>9 representations by ACG -- that's the respondent --</p> <p>10 ACG represents the following facts to be true.</p> <p>11 "E" on the next page, the work is an</p> <p>12 authentic work of art by Andrea del Sarto as</p> <p>13 described above in Section 1A.</p> <p>14 Do you see that?</p> <p>15 A I do see that.</p> <p>16 Q If you'll go to Section 1A, it's on the</p> <p>17 second page, identifies the artist as Andrea</p> <p>18 del Sarto?</p> <p>19 A Yes.</p> <p>20 Q The title of it is Ottaviano de' Medici --</p> <p>21 A Yes.</p> <p>22 Q -- the sitter?</p> <p>23 Medium oil on canvas; identifies the size</p> <p>24 and the date; do you see that?</p> <p>25 A I do see that.</p> | <p style="text-align: right;">Page 19</p> <p>1 Q Is that the basis of the assumption you</p> <p>2 were just referring to earlier?</p> <p>3 A Yes, that's correct.</p> <p>4 Q Okay. Now, in Dr. Simon's report, he also</p> <p>5 criticizes you for assuming the sitter is correct</p> <p>6 or confirmed.</p> <p>7 What was the basis for your assumption</p> <p>8 that the sitter was identified properly or</p> <p>9 correctly?</p> <p>10 A Well, again, I was asked to assume that as</p> <p>11 part of my assignment.</p> <p>12 Q And were you told the basis for that</p> <p>13 assumption?</p> <p>14 A Yes. It was similar to the previous one.</p> <p>15 It was represented by the respondent in the</p> <p>16 settlement agreement.</p> <p>17 Q Okay. Now, Dr. Simon also criticizes you</p> <p>18 for assuming the condition of the painting was</p> <p>19 good for its age and for not yourself personally</p> <p>20 inspecting the painting.</p> <p>21 Are you aware of that?</p> <p>22 A I am aware of that, yes.</p> <p>23 Q Now, why didn't you inspect the work in</p> <p>24 person?</p> <p>25 A Well, we asked to go and see the work, but</p> |
| <p style="text-align: right;">Page 20</p> <p>1 it was not available to be seen.</p> <p>2 Q Do you understand -- were you told why it</p> <p>3 was not available to be seen?</p> <p>4 A Well, it was slightly unclear, but it</p> <p>5 seemed that the respondent didn't have possession</p> <p>6 of the work. It wasn't made available for us. I</p> <p>7 mean, I would have wanted to see it. I still want</p> <p>8 to see this work, but it hasn't been available.</p> <p>9 Q Now, did you have any documents that were</p> <p>10 provided to you from the respondents related to</p> <p>11 the condition of the work?</p> <p>12 A Yes, I did. I had a condition report and</p> <p>13 some photographs.</p> <p>14 Q Now, go to page 23 of your report, please.</p> <p>15 A That's Exhibit 17?</p> <p>16 Q That's Exhibit 17.</p> <p>17 A What page is that?</p> <p>18 Q That's page 23.</p> <p>19 A Twenty-three, yes.</p> <p>20 Q Is this the condition report that you</p> <p>21 understood was provided by the respondents to the</p> <p>22 claimants?</p> <p>23 A That is correct, yes.</p> <p>24 Q Could you please tell us the conclusion</p> <p>25 that this condition report reached with respect to</p> | <p style="text-align: right;">Page 21</p> <p>1 the condition of the work?</p> <p>2 A Well, it states very plainly the painting</p> <p>3 is in fine and stable condition and it has been</p> <p>4 restored. And they say the restoration is going</p> <p>5 well.</p> <p>6 ARBITRATOR KRAMER: What are the blackout</p> <p>7 portions?</p> <p>8 MR. NIKAS: This report is provided by the</p> <p>9 respondents to the claimants in advance of the</p> <p>10 settlement to confirm the condition was good. So</p> <p>11 I don't have a copy without the redacted</p> <p>12 components. Those were not done by us.</p> <p>13 ARBITRATOR KRAMER: Do you have a copy</p> <p>14 that was signed by somebody?</p> <p>15 MR. NIKAS: I do not. This is what we</p> <p>16 received from the respondents.</p> <p>17 ARBITRATOR KRAMER: Okay.</p> <p>18 THE WITNESS: So basically it says it's in</p> <p>19 good condition.</p> <p>20 BY MR. NIKAS:</p> <p>21 Q The condition report also goes on to say</p> <p>22 that the del Sarto's artistic concept and the</p> <p>23 vitality of his original paint surface are, once</p> <p>24 again, apparent of the original canvas support,</p> <p>25 and it's super fine and exquisite grounds and</p> |

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| <p style="text-align: right;">Page 22</p> <p>1 paint layer and stabilized by implementations of a</p> <p>2 constant structure -- and it goes on.</p> <p>3 Did you reach any conclusions about</p> <p>4 whether the work may be in good condition as a</p> <p>5 result of this condition report?</p> <p>6 A Well, it was one of the assumptions that</p> <p>7 the condition report was accurate, and so I,</p> <p>8 therefore, assumed the picture was in good</p> <p>9 condition.</p> <p>10 Q Did you have any evidence that the</p> <p>11 respondents had been deceptive when they provided</p> <p>12 this condition report for review to the claimants?</p> <p>13 A I didn't have any -- no, I didn't have any</p> <p>14 reason to think that, no.</p> <p>15 ARBITRATOR KRAMER: Will there be</p> <p>16 testimony about the receipt of this letter?</p> <p>17 MR. NIKAS: Yes, there will be, sir.</p> <p>18 BY MR. NIKAS:</p> <p>19 Q Turn to page 20, please, of your report.</p> <p>20 A Twenty, yes.</p> <p>21 Q So far you've told us you didn't have</p> <p>22 access to the work but you had this condition</p> <p>23 report. Now, I want to look at page 20 which is</p> <p>24 an image of the del Sarto.</p> <p>25 A Indeed, yes.</p> | <p style="text-align: right;">Page 23</p> <p>1 Q Now, did you review this image on page 20</p> <p>2 of the del Sarto in connection with your expert</p> <p>3 report?</p> <p>4 A Yes, indeed. Not being able to see the</p> <p>5 work, this was all I had to go on, is the picture</p> <p>6 of it.</p> <p>7 Q And is there anything that you saw on the</p> <p>8 face of the photograph that gave you concern about</p> <p>9 the condition of the work?</p> <p>10 A No. I mean, there's a very limited amount</p> <p>11 you can tell from the photograph, but nothing gave</p> <p>12 me cause to panic about the condition, no.</p> <p>13 ARBITRATOR KRAMER: Will there be</p> <p>14 testimony about the provenance of this photo?</p> <p>15 MR. NIKAS: Likewise, it was part of the</p> <p>16 original package, so yes.</p> <p>17 BY MR. NIKAS:</p> <p>18 Q Dr. Hunter, on page 21 there is another</p> <p>19 picture of the work, and this one to my non expert</p> <p>20 eye looks a little less flowing than the one on</p> <p>21 the left.</p> <p>22 So if you could tell us whether on review</p> <p>23 of this image you developed any concerns about the</p> <p>24 condition that would be helpful for us to</p> <p>25 understand.</p> |
| <p style="text-align: right;">Page 24</p> <p>1 A Sure. This picture is a photograph of the</p> <p>2 painting in what we call a stripped print, when</p> <p>3 the varnish has been taken off and all the later</p> <p>4 retouching and repainting has been taken off. And</p> <p>5 so this is during the course of restoration.</p> <p>6 And to the non specialist, these</p> <p>7 photographs of pictures that are being stripped</p> <p>8 are quite difficult to interpret. I mean, it</p> <p>9 looks like, wow, there's lots of damage on it.</p> <p>10 But you have to bear in mind this is a picture</p> <p>11 that's 500 years old, and you expect to see</p> <p>12 certain amounts of, you know, wear, abrasion,</p> <p>13 paint loss. This is quite normal. In fact, if it</p> <p>14 had no paint loss, you'd be rather suspicious</p> <p>15 actually.</p> <p>16 So to me, this doesn't look particularly</p> <p>17 bad. I've seen many paintings in far worse state</p> <p>18 than this for this age. There's areas of paint</p> <p>19 loss of course, but nothing terrible, nothing</p> <p>20 that's really disfiguring. The face is in pretty</p> <p>21 good condition. The beautiful sleeve and the --</p> <p>22 his cloak is in pretty good condition. I think</p> <p>23 that to me -- I mean, without seeing it, it's very</p> <p>24 difficult to say for sure, but that doesn't raise</p> <p>25 any alarm bells to me. That's consistent with</p> | <p style="text-align: right;">Page 25</p> <p>1 being in good condition.</p> <p>2 ARBITRATOR KRAMER: So you assume that</p> <p>3 looking at this, the painting was being restored?</p> <p>4 THE WITNESS: Oh, yes, that shows me that</p> <p>5 photograph is taken by the restorer while it was</p> <p>6 being restored, so it had been stripped. All the</p> <p>7 later retouching was taken off and then the</p> <p>8 restorer would apply new retouching, better</p> <p>9 retouching to those areas and a final varnish</p> <p>10 layer to get it to this stage.</p> <p>11 ARBITRATOR KRAMER: Do you know what date</p> <p>12 the picture on page 21 was taken and what date the</p> <p>13 picture on page 20 was taken?</p> <p>14 THE WITNESS: Well, that's a good</p> <p>15 question. I don't know the date, but I would say</p> <p>16 this is fairly recent.</p> <p>17 ARBITRATOR KRAMER: Okay.</p> <p>18 BY MR. NIKAS:</p> <p>19 Q Now, the condition report that we just</p> <p>20 reviewed indicated that there a restoration of the</p> <p>21 work and that the restoration was successful?</p> <p>22 A Yes, it does say that.</p> <p>23 Q Are these two pictures, the one on the</p> <p>24 left, the one on the right, consistent with your</p> <p>25 experience with what a restoration would look like</p> |

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| <p style="text-align: right;">Page 26</p> <p>1 in stages?</p> <p>2 A Yes, it is.</p> <p>3 Q Now, the picture on the left, page 20 --</p> <p>4 A Yeah.</p> <p>5 Q Strike that.</p> <p>6 So in connection with your report, you had</p> <p>7 the condition report and these two images, do you</p> <p>8 have any other evidence with respect to the</p> <p>9 condition of the work in your possession?</p> <p>10 A No, not to my knowledge, no.</p> <p>11 Q And in order to make a final conclusion</p> <p>12 with respect to the condition, is it -- do I</p> <p>13 understand you correctly that the only other thing</p> <p>14 you would have needed was access to the work</p> <p>15 itself?</p> <p>16 A Well, that's a prerequisite, yes, I would</p> <p>17 need to see it. I mean, the condition of</p> <p>18 renaissance paintings in general is quite a</p> <p>19 complicated issue. And it may have been necessary</p> <p>20 having seen the picture to talk to a qualified</p> <p>21 restorer to get a qualified restorer to look at it</p> <p>22 as well, that's quite possible, but that wasn't</p> <p>23 available to us, so I had to work with what I had.</p> <p>24 Q Please turn to Exhibit 3. Now, are you</p> <p>25 aware that following your submission of the expert</p> | <p style="text-align: right;">Page 27</p> <p>1 report in this case, we were informed by the</p> <p>2 respondent that there was another report that</p> <p>3 Winston had prepared regarding this del Sarto?</p> <p>4 A Yes, I was told that.</p> <p>5 Q Were you also told that in addition to</p> <p>6 that Winston report there was another report that</p> <p>7 put a \$30 million valuation in that file at</p> <p>8 Winston?</p> <p>9 A Yes, I was informed of that as well.</p> <p>10 Q Now, Exhibit 3 is the \$30 million</p> <p>11 appraisal.</p> <p>12 A Yes.</p> <p>13 Q Did you review appraisal after you learned</p> <p>14 about it in connection with this case?</p> <p>15 A I did, yes. I mean, not in detail.</p> <p>16 ARBITRATOR KRAMER: This is the Freedberg?</p> <p>17 THE WITNESS: This is Anne Frances Moore.</p> <p>18 MR. NIKAS: This is the Anne Frances</p> <p>19 Moore.</p> <p>20 THE WITNESS: I did read through it, yes.</p> <p>21 BY MR. NIKAS:</p> <p>22 Q Now, did you see in that report where Anne</p> <p>23 Frances Moore concluded that the work was in good</p> <p>24 and stable condition?</p> <p>25 A I did notice that, yes.</p> |
| <p style="text-align: right;">Page 28</p> <p>1 Q Did you see anything else in that report</p> <p>2 that related to the condition of the work?</p> <p>3 A I don't think so. I mean, I don't</p> <p>4 remember, to be honest. I don't think so.</p> <p>5 Q When the report reached the conclusion</p> <p>6 that it was in good and stable condition, did you</p> <p>7 have any evidence that that conclusion was</p> <p>8 inaccurate?</p> <p>9 A I didn't have any evidence, no.</p> <p>10 Q Now, page 17 of 33 on this report, it says</p> <p>11 condition, structurally stable and in excellent</p> <p>12 condition for its age.</p> <p>13 Do you see that?</p> <p>14 A Yes, I do see that, yes.</p> <p>15 Q And, again, do you have evidence that that</p> <p>16 was inaccurate?</p> <p>17 A I didn't have evidence that it was</p> <p>18 inaccurate, no.</p> <p>19 Q Now, if you could go -- talk for a moment</p> <p>20 about the \$1.5 million appraisal --</p> <p>21 A Yes.</p> <p>22 Q -- that Winston Art Group prepared,</p> <p>23 Exhibit 2.</p> <p>24 A Two, yes.</p> <p>25 Q Now, this report on page 8 says that there</p> | <p style="text-align: right;">Page 29</p> <p>1 is a question as to whether the condition may be</p> <p>2 more complex than is presented.</p> <p>3 Did you read that language in the Winston</p> <p>4 report?</p> <p>5 A I did read that, yes.</p> <p>6 Q And upon reading the report, was it your</p> <p>7 view that the report reached a conclusion about</p> <p>8 the condition of the work?</p> <p>9 A No. I mean, it says it's more complex</p> <p>10 than the condition report states, but it doesn't</p> <p>11 really come down and say either way to be honest.</p> <p>12 Q So when you read that as a professional in</p> <p>13 this field, did you read that as saying it was in</p> <p>14 good condition?</p> <p>15 A I -- neither good nor bad; it was saying</p> <p>16 it's complicated.</p> <p>17 Q And in those circumstances, what evidence</p> <p>18 would one need in order to sort out whether it's</p> <p>19 in fact -- the work is, in fact, in good condition</p> <p>20 or bad condition?</p> <p>21 A Well, first of all, you'd need to see the</p> <p>22 work and examine it yourself, and then I think you</p> <p>23 would probably need to get a qualified restorer to</p> <p>24 have a look at it and then you discuss it with the</p> <p>25 restorer.</p> |

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| <p style="text-align: right;">Page 30</p> <p>1 Q So following your expert report where you</p> <p>2 had no access to the work but a condition report,</p> <p>3 you then reviewed these two reports, and my</p> <p>4 question to you is, did either of those reports in</p> <p>5 your view cause you to change or undermine your</p> <p>6 assumption that the work was in good condition?</p> <p>7 A Well, no, not really. I mean, to be</p> <p>8 honest, I don't have really have an opinion on the</p> <p>9 condition of the picture. I haven't seen the</p> <p>10 picture, so I can't form my own conclusion on</p> <p>11 that. Obviously I've been given -- provided with</p> <p>12 documents that say it's in good condition. And</p> <p>13 nothing that I've seen from -- later on from these</p> <p>14 other reports or from the condition repeat or from</p> <p>15 photographs would lead me to think that it's in</p> <p>16 bad condition. But my opinion has to be qualified</p> <p>17 because I haven't seen it, so I don't know for</p> <p>18 sure.</p> <p>19 Q Now, I want to talk about the standards</p> <p>20 governing your appraisal for a moment.</p> <p>21 With respect to authenticity, which</p> <p>22 Dr. Simon criticizes you for assuming, is there an</p> <p>23 appraisal rule or standard that would require you</p> <p>24 to disregard an assumption that the work was</p> <p>25 authentic even when the respondent in a legal case</p> | <p style="text-align: right;">Page 31</p> <p>1 has represented that the work is authentic?</p> <p>2 MR. PRESS: Objection; this is</p> <p>3 argumentative.</p> <p>4 ARBITRATOR KRAMER: I'm not sure I</p> <p>5 understood the question either.</p> <p>6 MR. NIKAS: Sure.</p> <p>7 BY MR. NIKAS:</p> <p>8 Q You assume -- if Dr. Simon criticizes you</p> <p>9 for assuming the work was authentic --</p> <p>10 A Yes.</p> <p>11 Q -- or fully confirmed?</p> <p>12 And my question is, is there a rule</p> <p>13 governing your profession, appraiser rule or</p> <p>14 standard, that says you're required to disregard a</p> <p>15 contractual promise that the work is authentic</p> <p>16 when valuing the work?</p> <p>17 MR. PRESS: Same objection; this is</p> <p>18 argumentative.</p> <p>19 ARBITRATOR KRAMER: It's overruled.</p> <p>20 THE WITNESS: No, there is no such rule</p> <p>21 that says that, no.</p> <p>22 BY MR. NIKAS:</p> <p>23 Q With respect to the sitter, Dr. Simon</p> <p>24 criticizes you, that the sitter hasn't been fully</p> <p>25 confirmed or identified, same question, is there</p> |
| <p style="text-align: right;">Page 32</p> <p>1 an appraisal rule that says that you are required</p> <p>2 to disregard a contractual promise that the sitter</p> <p>3 is accurately identified in a work?</p> <p>4 MR. PRESS: Objection; argumentative.</p> <p>5 ARBITRATOR KRAMER: Overruled.</p> <p>6 THE WITNESS: No, there is no such rule.</p> <p>7 BY MR. NIKAS:</p> <p>8 Q Now, with respect to the condition, again</p> <p>9 Dr. Simon criticizes you for assuming the</p> <p>10 condition is good, same question, is there an</p> <p>11 appraiser rule that says you're required to</p> <p>12 disregard a representation that a work is in good</p> <p>13 condition when forming your appraisal?</p> <p>14 MR. PRESS: Same objection.</p> <p>15 ARBITRATOR KRAMER: Overruled.</p> <p>16 THE WITNESS: No, there's no such rule.</p> <p>17 BY MR. NIKAS:</p> <p>18 Q Now, let's talk about the \$15 million</p> <p>19 valuation that you provided in this report that</p> <p>20 we've received in the case.</p> <p>21 Could you, please, tell us the method, the</p> <p>22 methodology that you used to reach the conclusion</p> <p>23 that the work is worth \$15 million?</p> <p>24 A Yes. I used the comparable sale method to</p> <p>25 arrive at my appraisal value.</p> | <p style="text-align: right;">Page 33</p> <p>1 Q Could you please explain to us what the</p> <p>2 comparable sale method is?</p> <p>3 A Yes. So you look for similar works by the</p> <p>4 artist; or if they're not available, similar works</p> <p>5 by other artists of same sort of stature or</p> <p>6 standing as this artist, and you have to compare</p> <p>7 those comparables with the work and you come to a</p> <p>8 conclusion about, you know, the value based on</p> <p>9 these other sales.</p> <p>10 Q Where do you look for the comparables you</p> <p>11 ultimately choose to provide evidence of value?</p> <p>12 A You look in auction sales and sometimes</p> <p>13 private sales when it's published when you know</p> <p>14 the price.</p> <p>15 Q And how do you access information about</p> <p>16 auction sales?</p> <p>17 A Well, they are readily available on sites</p> <p>18 such as Artnet. They -- you can search for</p> <p>19 auction sales from all the main auction houses all</p> <p>20 around the world and I also frequent the main</p> <p>21 auctions and Old Master paintings. Regularly, I</p> <p>22 go to the views and I have the catalogs and I look</p> <p>23 at the catalogs online, so it's my research, plus,</p> <p>24 you know, very useful tool like I Artnet.</p> <p>25 Q And are those sources regularly used by</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 experts in your field?</p> <p>2 A Absolutely, they're used all the time.</p> <p>3 Q Now, how about the comparable sales method</p> <p>4 of valuation, is that a method that's used</p> <p>5 regularly by experts in your field?</p> <p>6 A Yes, it would be the most common method I</p> <p>7 would say.</p> <p>8 Q And when you use that method and select</p> <p>9 comparable sales, generally speaking, how do you</p> <p>10 use those comparable sales to reach an estimate of</p> <p>11 value?</p> <p>12 A You have to use your judgment, you need to</p> <p>13 decide on the merits of each particular</p> <p>14 comparable, whether they're better than the</p> <p>15 picture you're valuing or whether they're worse or</p> <p>16 are there mitigating circumstances, are there --</p> <p>17 you know, is it comparable in terms of condition,</p> <p>18 is it comparable in terms of attribution, is it as</p> <p>19 commercial as -- as commercial as the work you're</p> <p>20 valuing? You have to weigh all these factors and</p> <p>21 then you come to your conclusion about the value</p> <p>22 of the picture that you're, you know, meant to be</p> <p>23 valuing.</p> <p>24 Q And that's so based on drawing those</p> <p>25 inferences from the comparables?</p> | <p style="text-align: right;">Page 35</p> <p>1 A Yes.</p> <p>2 Q Now, did you identify comparables to the</p> <p>3 del Sarto at issue in this case?</p> <p>4 A Yes, I did, and I put them in my report.</p> <p>5 Q If you could go to pages -- starting on</p> <p>6 page 28, pages 28 to 30.</p> <p>7 A Yes, here they are.</p> <p>8 Q Are these the comparables that you</p> <p>9 identified?</p> <p>10 A Yes, that's correct.</p> <p>11 Q Could you please -- let's go work by work.</p> <p>12 If you one at a time for us to break up the</p> <p>13 testimony, starting with the Botticelli at the</p> <p>14 beginning, can you tell us please why you identify</p> <p>15 this work as a comparable?</p> <p>16 A Yes, of course. Well, Botticelli was a</p> <p>17 very recent work. It came up in 2021 January and</p> <p>18 made it a phenomenal price, it made \$92 million.</p> <p>19 And I included this not because I think that the</p> <p>20 Andrea del Sarto was worth a comparable amount. I</p> <p>21 don't. I think it's worth less. But this picture</p> <p>22 shows the strength of the market for high-quality</p> <p>23 Renaissance portraits.</p> <p>24 This is a portrait from about 1480. It</p> <p>25 has a very good provenance going back to the 18th</p> |
| <p style="text-align: right;">Page 36</p> <p>1 Century. It was quite a well-known picture. I</p> <p>2 mean, it was in all the Botticelli books. It's</p> <p>3 one of Botticelli's rare portraits. I mean,</p> <p>4 portraiture in general in this period was a fairly</p> <p>5 recently phenomenon. I mean, humanists have known</p> <p>6 that portraiture have been practiced by the ages,</p> <p>7 but the genre of portraiture didn't really fit in</p> <p>8 the Middle Ages in the way that we think of it</p> <p>9 now. And it was resurrected in Florence actually</p> <p>10 in the 1460s and slightly later in Venice. And</p> <p>11 Botticelli is one of the earliest -- it's not the</p> <p>12 earliest, but he's one of the earliest exponents</p> <p>13 of portraiture. He painted about a dozen</p> <p>14 portraits. This is a really, really good example</p> <p>15 of it.</p> <p>16 So this is a really highly important,</p> <p>17 early portrait from the 1480s. It was</p> <p>18 quintessentially quattrocento production by one of</p> <p>19 the greatest Florentine painters. It was in</p> <p>20 fantastic condition for its age, and, you know, it</p> <p>21 made this fantastic price. I included it to</p> <p>22 really -- because it's more important than the</p> <p>23 current picture that we're talking about. It just</p> <p>24 shows you when all the stars are aligned, you can</p> <p>25 get these new, fantastic prices.</p> | <p style="text-align: right;">Page 37</p> <p>1 Q Now, did you think that work was relevant</p> <p>2 the valuation of the del Sarto?</p> <p>3 A Well, it's relevant in the sense that --</p> <p>4 I'm saying it's not -- this is better, so this is</p> <p>5 an upper limit of what you can get for a great</p> <p>6 Renaissance portrait.</p> <p>7 Q Now, one question about condition, which</p> <p>8 you've mentioned a few times.</p> <p>9 Were you able to review any of the</p> <p>10 comparable works in person when preparing your</p> <p>11 expert report?</p> <p>12 A Not when I prepared the report, no. But I</p> <p>13 had seen many of these comparables previously when</p> <p>14 they were up at sale or an exhibition. I hadn't</p> <p>15 seen that one.</p> <p>16 I mean, also the other interesting thing</p> <p>17 about Botticelli, it sold during the COVID</p> <p>18 lockdown. I mean, it was in January 2021. I</p> <p>19 couldn't come to New York to see the sale. I</p> <p>20 didn't see this picture. But it's remarkable how</p> <p>21 well it did considering it was in the middle of</p> <p>22 lockdown.</p> <p>23 Q Now, if we could go to the next work, the</p> <p>24 Bronzino.</p> <p>25 A Yes.</p> |

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1 Q And if you could please explain to us why
2 you selected that work as a comparable for the
3 del Sarto.

4 A Yes. Well, this is a very interesting
5 work. And I think this work is a much more
6 personate comparable, and so I relied quite a lot
7 on this particular piece. This is an interesting,
8 very beautiful portrait by Bronzino, but it wasn't
9 always thought to be by Bronzino.

10 This picture first appears in the Corsini
11 collection in 1842. And the inventory of the
12 Corsini collection actually attributes this
13 picture to del Sarto. This is thought to be by
14 del Sarto. And for all of the 19th Century this
15 work was regarded as a del Sarto.

16 And then in the early 20th Century, that
17 view changed and people decided to give it instead
18 to Pontormo. Now, Pontormo was del Sarto's
19 greatest student. And it was also a fantastic
20 portrait, among other things.

21 But this attribution to Pontormo also
22 didn't really convince everybody. And there
23 was -- in the 20th Century, people were beginning
24 to think it was not really by del Sarto, not by
25 Pontormo; they didn't really know who this picture

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1 cheek of the sitter's face; that would've
2 necessitated retouching, repainting, and that's a
3 limiting factor on the condition.

4 And the second thing was that this picture
5 had a financial -- the auction house, Christie's,
6 had a financial interest in the picture as well,
7 and that was declared at the sale. That can
8 sometimes limit the price the artwork makes. So
9 those are two limiting factors.

10 And this, as you can see, was estimated at
11 eight to \$12 million, and it made 9.1. That's
12 with premium. It probably made the lowest in the
13 eight million, which is probably reserve. It
14 could have made more if it was in better
15 condition. It's a very beautiful portrait.

16 Now, my reasoning goes -- this is -- it's
17 a very comparable portrait, half-length man seated
18 at the table, very similar to the portrait we're
19 looking at. Bronzino is a fantastic portrait
20 painter, but he's the student of the Pontormo,
21 who, himself, was a student of del Sarto. Now, a
22 del Sarto picture, it's much earlier, it's the
23 High Renaissance. del Sarto, you know, is one of
24 the greatest -- you're talking the last greatest
25 of the High Renaissance, and I would say that a

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1 was by. And it kind of was under the radar for a
2 bit. It was in the early literature, but it
3 wasn't really talked about. And then it was kind
4 of rediscovered in the later -- in about -- I
5 don't know exactly when it was, but it was in the
6 later 20th Century. And when it was rediscovered,
7 it was reappraised, probably cleaned, and people
8 then recognized that it was work by Bronzino.

9 Now, Bronzino was Pontormo's student, so
10 you have a direct line from del Sarto; del Sarto
11 trained Pontormo and Pontormo trained Bronzino.
12 So there's a distinct line of portraiture starting
13 from del Sarto. It was recognized by Bronzino.
14 It's published by Falciano. It's going to be in
15 the Capital of Resonay and it was -- in the
16 catalog it was authenticated by Janet Mira Cox as
17 well.

18 So there's an academic consensus now that
19 this work is by Bronzino. It's got a nice, old
20 provenance. It's a beautiful portrait. It's very
21 comparable.

22 Now, there are two things that limit the
23 value of this picture. It was on panel, and the
24 panel cracked in numerous places. And one of the
25 cracks ran down from the top through the left

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1 del Sarto portrait is rarer than a Bronzino and,
2 therefore, is more valuable, so this a key
3 comparable I would say.

4 Q Now, the next work, the Delaporta --
5 A Or Fra Bartolomeo, as we call it.

6 Q Yes, we do. If you could please tell us
7 why you identified this as a comparable and the
8 relevance to your valuation.

9 A Yes, indeed. Well, Fra Bartolomeo was
10 another great figure of the High Renaissance and
11 he was ten years older than del Sarto. And
12 del Sarto was very heavily influenced actually by
13 Fra Bartolomeo.

14 This is a fairly early work by
15 Fra Bartolomeo from the 1490s. Very beautiful
16 work. Incredibly close actually to Donatello. So
17 Fra Bartolomeo was looking at Donatello's work.
18 Donatello was a great sculptor. And there's a
19 wonderful relief, the Pazzi Madonna, that
20 Donatello carved where it follows exactly this
21 pose, you know, the profile of the Madonna and the
22 Christ Child. Very, very close. The Pazzi
23 Madonna is on the cover of the current Donatello
24 exhibition that's in Berlin at the moment. And
25 it's fascinating how Fra Bartolomeo is looking at

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| <p style="text-align: right;">Page 42</p> <p>1 earlier work, Bartolomeo is earlier, and this was 2 influencing artists up to the late quattrocento. 3 Now, this picture is -- I remember seeing 4 it, but I don't remember seeing -- I don't 5 remember the condition. It looks like it's in 6 quite good condition from the photograph. 7 This is -- it's a religious work. It's 8 from the portrait of course, but I thought it was 9 relevant because, you know, it's in the same -- 10 little bit early, but it's a similar period, and 11 this is an artist who was very influential on 12 del Sarto; they worked in the same ambiance. This 13 made 12.9 million, almost \$13 million back in 14 2013. I think this is the sort of price area that 15 we're look at with a del Sarto. 16 Q Now, the next work is Raphael. 17 Can you tell us why you selected that as a 18 comparable -- 19 A Yes. 20 Q -- and the relevance to your opinion? 21 A Yes. Well, this is quite a well-known 22 portrait by Raphael. I remember this portrait 23 very well because it was sold when I was at 24 Christie's, so I played my role in cataloging it, 25 and I was there for the sale, and then I've seen</p> | <p style="text-align: right;">Page 43</p> <p>1 it subsequently because it was exhibited in the 2 recent Raphael exhibition in the National Gallery. 3 This is quite a complicated picture 4 actually. This was sold -- this was in the trade, 5 this picture. It was well known. It was not 6 fresh to the market. But it had a good, old 7 provenance. It's -- it's a slightly -- it's 8 slightly -- for Raphael, it's slightly weak in 9 places. I mean, the face is a little bit weak, 10 it's a bit worn; there is some abrasion and some 11 retouching there. The costume is very good and 12 the right hand is actually rather good, but there 13 are some weaknesses in the composition. There's 14 also quite a formal pose. Raphael painted this 15 for Lorenzo de' Medici's marriage into the French 16 royal family. It was probably a sort of official 17 portrait that was given as a gift, so it's 18 slightly formal. It doesn't have the intimacy of 19 Raphael's -- some of these other portraits like 20 the famous Castiglione portrait, which is a great 21 masterpiece. 22 And the fact that it came from the 23 trade -- you know, I think there are other Raphael 24 portraits that if they came onto the market, would 25 make substantially more than this figure of</p> |
| <p style="text-align: right;">Page 44</p> <p>1 37 million. I mean, Raphael drawings can make 2 40 million plus. So this is a fairly low figure, 3 I would say, for a great Raphael portrait. 4 So it's relevant in our case; Raphael is a 5 more highly regarded artist than del Sarto. They 6 were almost exact contemporaries, but Raphael, you 7 know, is a more lauded artist. But I thought it 8 relevant. I'm pitching the value of the del Sarto 9 below this level because I think he's not as 10 important as Raphael. This Raphael portrait 11 itself, you know, is not the best Raphael 12 portrait. 13 Q You have another Raphael portrait next as 14 a comparable? 15 A I do. I go to this portrait. I say that 16 this is not particularly relevant. I mean, I -- 17 not every portrait, not every work I've included. 18 Sometimes you put them in to discount them, you 19 see. 20 And this is a -- I put this in to show 21 that even a tiny little -- about this size, it's 22 really small -- by Raphael can make 3.2 million. 23 Not every Raphael makes unbelievable amounts of 24 money. It was a fairly small, little thing. It 25 was from the Taubman sale. It didn't have a huge</p> | <p style="text-align: right;">Page 45</p> <p>1 literature attached to it. I'm saying this is 2 not -- I mean, it's another Raphael portrait, but 3 it's not comparable to our picture. 4 Q Okay. You have two del Sartos next. 5 Could you tell us -- 6 ARBITRATOR KRAMER: Three actually. 7 BY MR. NIKAS: 8 Q Three drawings as well; two paintings 9 next? 10 A Yes. 11 Q Could you please walk us through those two 12 paintings and why you think they -- 13 A Indeed. Well, obviously when you're using 14 the sale, comparable sale method, you hope to find 15 a very comparable work like the artist you're 16 dealing with. Sadly, there are no portraits by 17 del Sarto that have come on the market, you know, 18 in recent times, so I couldn't use one of those. 19 That's what you ideally would like to find. But 20 there have been some del Sartos that have been on 21 the market. And these two paintings have come up. 22 Now, both of them failed to sell, and that was 23 because they both came from the trade and were 24 overly -- 25 ARBITRATOR KRAMER: Coming from trade</p> |

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| <p style="text-align: right;">Page 46</p> <p>1 means what?</p> <p>2 THE WITNESS: So they belong to members of</p> <p>3 the art trade. They were dealer's pictures. They</p> <p>4 weren't from private collections. And so when</p> <p>5 they're from dealers, they've probably been on the</p> <p>6 market previously, so they've been -- they tried</p> <p>7 to sell them, they couldn't sell them, and now</p> <p>8 they put them into auction. They're not fresh to</p> <p>9 the market. And in Old Master paintings, there's</p> <p>10 quite a premium on pictures that are fresh to the</p> <p>11 market from private sources.</p> <p>12 So these both in their own different ways</p> <p>13 suffered. The first one, actually that had been</p> <p>14 up for sale previously. On the next page, it</p> <p>15 appears again. It was up in sale in 2000. It</p> <p>16 came up again in 2011. It was -- in the meantime</p> <p>17 being owned by the trade. It was known about. It</p> <p>18 had quite a punchy estimate from that perspective</p> <p>19 and it didn't sell.</p> <p>20 The second one, I know well because when I</p> <p>21 was at Gurr Johns we consigned that picture to the</p> <p>22 Sotheby's sale. This picture had an attribution</p> <p>23 issue. In Freedberg's catalog, it was described</p> <p>24 as a copy. And in fact, in Shearman's catalog,</p> <p>25 which came a couple years after Freedberg, these</p> | <p style="text-align: right;">Page 47</p> <p>1 are the two great catalogs of del Sarto, Freedberg</p> <p>2 '63 and Shearman '65, two volume works each, they</p> <p>3 listed this picture as a copy, so it wasn't</p> <p>4 accepted. And then it was -- it was, you know,</p> <p>5 cleaned and some work was done and they -- it was</p> <p>6 re attributed to -- full to del Sarto. I think</p> <p>7 the fact that it had been published as wrong</p> <p>8 counted against it and also came from the trade,</p> <p>9 from Gurr Johns, and it didn't sell.</p> <p>10 So I'm using those examples to show that</p> <p>11 not every del Sarto sells. It has to have the</p> <p>12 right factors, and, you know, you need to</p> <p>13 interpret these things quite carefully.</p> <p>14 ARBITRATOR KRAMER: Was there a reason why</p> <p>15 you only looked at comparable sales in the 21st</p> <p>16 Century, going back before 2000?</p> <p>17 THE WITNESS: No. I think if I found a</p> <p>18 good comparable from earlier, I would have used</p> <p>19 it. The further you go back, the more out of date</p> <p>20 the price is and it doesn't count as very</p> <p>21 comparable. And you have to think, well, what</p> <p>22 would that picture make now?</p> <p>23 Even a picture that's sold in 2013, now, I</p> <p>24 think, you know, if it's a good picture, it would</p> <p>25 make even more now. You try and keep it as close</p> |
| <p style="text-align: right;">Page 48</p> <p>1 to the sale date that you're looking at as</p> <p>2 possible, otherwise you get into problems of how</p> <p>3 the market has moved in the meantime.</p> <p>4 ARBITRATOR KRAMER: Okay.</p> <p>5 BY MR. NIKAS:</p> <p>6 Q Now, the next work that you've identified</p> <p>7 is another del Sarto that sold for 11.4 million.</p> <p>8 Could you please tell us why you</p> <p>9 identified that as a comparable and how it's</p> <p>10 relevant to your analysis?</p> <p>11 A Yes. Well, I think this is the third of</p> <p>12 the really good comparables I'm relying on. This</p> <p>13 is by del Sarto. It's a drawing. He was a</p> <p>14 wonderful draftsman. There are around 150, maybe</p> <p>15 a few more, drawings that are fully attributable</p> <p>16 to del Sarto in existence. There would have been</p> <p>17 many more, but they haven't survived.</p> <p>18 del Sarto generally made drawings as</p> <p>19 preparatory studies for his works, and this is a</p> <p>20 preparatory study. It's the head of Joseph from</p> <p>21 the beautiful Holy Family, which was commissioned</p> <p>22 by the Bracci family in 1523, which is the Pitti</p> <p>23 Palace today. And this the head study for Joseph.</p> <p>24 It had a fantastic provenance. It was owned by</p> <p>25 Vasari, who was the great art historian, 16th</p> | <p style="text-align: right;">Page 49</p> <p>1 Century art historian. And Vasari, in fact, was</p> <p>2 also a student of del Sarto. And Vasari was an</p> <p>3 artist of some distinction and he was a great</p> <p>4 collector. And the fact that this was in Vasari's</p> <p>5 collection is really amazing. And it's a very,</p> <p>6 very beautiful head study in black and red chalk,</p> <p>7 which is quite unusual. There are very few</p> <p>8 drawings by del Sarto of this quality left in</p> <p>9 private hand. I mean, it would be half a dozen</p> <p>10 probably. So it was highly sought after. Made a</p> <p>11 fine price, \$11.4 million.</p> <p>12 I thought this was crucial because this is</p> <p>13 a sketch of a head for a painting. Now, if you</p> <p>14 have a real del Sarto portrait in the 1520s, you</p> <p>15 know, that would -- you would expect to make even</p> <p>16 more than a head study, even a great head study</p> <p>17 like this. So this was another very, very useful</p> <p>18 comparable.</p> <p>19 Q And this indicates that the sale was in</p> <p>20 2005, 11.426 million.</p> <p>21 Would you expect that price to increase</p> <p>22 over time?</p> <p>23 A I think for such a rare, beautiful head</p> <p>24 study like that, yes, it would be worth more now.</p> <p>25 Q The last page of your list of comparables,</p> |

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| <p style="text-align: right;">Page 50</p> <p>1 page 30, you identify del Sarto that reflects an 2 earlier sale from the sale reference on the prior 3 page?</p> <p>4 A Yes, that's correct. It's not entirely 5 clear. The photographs when they are in color, 6 they look slightly different, but I think that's 7 the same as the one on the previous page that sold 8 again -- offered again in 2011, so it sold in 2000 9 for just over a million. It was offered again and 10 didn't sell. So it had been on the market and 11 that counted against it.</p> <p>12 Q And the comments you made with respect to 13 that work when they discussed earlier are the same 14 comments you'd make about this particular entry in 15 the comparable list?</p> <p>16 A Yes, that's correct.</p> <p>17 Q Now, could you tell us, how did you use 18 all of those different figures from the 92 19 million, 9.1, 11.4 to determine an ultimate value 20 of 15 million?</p> <p>21 A Well, I -- to put it simply, it's not in 22 the same league as a Botticelli, so I'm 23 discounting that. It's in the Bronzino league. 24 It's better than Bronzino, so I'm saying it would 25 be more than nine million. It's in the realms of</p> | <p style="text-align: right;">Page 51</p> <p>1 Fra Bartolomeo, which is 12.9, but this a 2 religious picture and we're dealing with a secular 3 portrait which is more commercial probably, 4 inching up a bit higher. It's not as much as the 5 Raphael even though the Raphael is complicated as 6 we discussed. Certainly not like the smaller 7 Raphael.</p> <p>8 The two del Sartos that were unsold during 9 the trade -- and there are reasons for that, as 10 I've described. The head study which made 11.4, 11 this is in the right realm again, but I think a 12 portrait is worth more than this head sketch. So 13 in balance, I weighted up, and I came to the view 14 that I think this picture is worth \$15 million 15 fair market value.</p> <p>16 Q Now, you're aware that the respondents 17 have complained that Winston did not produce an 18 earlier appraisal that was prepared by a different 19 appraiser at the company?</p> <p>20 A Yes, I'm aware of that.</p> <p>21 Q Now, could you tell us, please, what your 22 involvement was -- let's go to the report. Go to 23 Exhibit 2, the fair market value appraisal, 24 collateral of loan, 1.5 million. 25 Do you see this?</p> |
| <p style="text-align: right;">Page 52</p> <p>1 A I do, yes.</p> <p>2 Q Were you aware that -- do you recall that 3 this report had been prepared when you prepared 4 your expert report in this case?</p> <p>5 A No, I did not recall it, no.</p> <p>6 Q Did you -- in connection with this report, 7 did you do any research, this earlier report?</p> <p>8 A No, I did not do any research.</p> <p>9 Q Did you draft any components of it?</p> <p>10 A No, I did not.</p> <p>11 Q Did you review a draft of any portions of 12 this report before it was finalized?</p> <p>13 A No, I did not.</p> <p>14 Q Did you review the final draft of this 15 report after it was prepared by Winston?</p> <p>16 A No, I didn't.</p> <p>17 Q Were you informed about the ultimate value 18 that the other appraiser had reached in connection 19 with this report?</p> <p>20 A No.</p> <p>21 Q Did you ever receive the final copy of 22 this report after it was prepared and put it in 23 your files?</p> <p>24 A I didn't at the time. I mean, I have been 25 sent it since, but at the time, no, I was not sent</p> | <p style="text-align: right;">Page 53</p> <p>1 this report.</p> <p>2 Q And you said you have been sent it since. 3 Is that after you prepared your expert report in 4 this case?</p> <p>5 A That's correct.</p> <p>6 Q Did you have access to this report as a 7 consultant of Winston through your access to files 8 of the company?</p> <p>9 A No. I'm an consultant of Winston. I 10 don't have access to their files. I can't search 11 their database, no.</p> <p>12 Q Do you have any -- did you take any notes 13 about any research or value in connection with 14 this report at the time it was prepared?</p> <p>15 A Well, when it was brought to my attention, 16 I looked through my files and I couldn't find any 17 notes about it, no.</p> <p>18 Q Now, was there a conflict check -- let me 19 ask another question.</p> <p>20 Between this report, in October of 2019, 21 and November of 2021, so two years between the two 22 reports, how many works had you appraised?</p> <p>23 A Well, I counted 105 separate appraisals I 24 did for Winston, just for Winston, during that 25 period. And as I said before, those appraisals</p> |

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| <p style="text-align: right;">Page 54</p> <p>1 can be multiple works. Some of them run into 2 hundreds. Most of them are less than that. Most 3 of them are a few works, but I mean, I would have 4 valued many, many hundreds, possibly over a 5 thousand that's conceivably works during that 6 period, individual works.</p> <p>7 Q Do you remember every single work that you 8 appraised out of the thousands?</p> <p>9 A No, that would be impossible, no.</p> <p>10 Q Did you remember this one?</p> <p>11 A No, I didn't remember this one, no.</p> <p>12 Q Now, with this report, it says that you 13 provided assistance.</p> <p>14 Could you, please, tell us what role you 15 had in connection with this report back in October 16 of 2019?</p> <p>17 A Well, I had a phone conversation with 18 Geza, possibly one or two conversations with him.</p> <p>19 ARBITRATOR KRAMER: With whom?</p> <p>20 THE WITNESS: With Geza von Habsburg. He 21 was the appraiser here. I had a telephone 22 conversation with him and we discussed -- we would 23 have discussed it in that.</p> <p>24 BY MR. NIKAS:</p> <p>25 Q Can you remember specifically what you</p> | <p style="text-align: right;">Page 55</p> <p>1 said to him on that phone call about this work?</p> <p>2 A Well, no, I can't remember specifically, 3 no.</p> <p>4 Q How about generally?</p> <p>5 A Well, yes, I mean, in -- now that I see 6 the report, and I see the owner's name attached to 7 it, I did recall talking about this issue with 8 Geza, but it was owned by a person called Bonito. 9 It's an unusual name. And I remember this name 10 because Virginia Bonito, Professor Bonito, had 11 approached me previously when I was working at 12 Falcon Fine Art. She had a sculpture by Jacopo 13 Sansovino that she wanted to finance. She wanted 14 a loan against it. So I looked into that. And I 15 remember she -- I had never met here, but we had 16 phone conversations and her agents used to call me 17 quite a lot, and I said to her this looks 18 interesting, but we can't do just one work. We 19 need a second work. And she told me, ah, I have a 20 fantastic portrait by Andrea del Sarto that I 21 jointly own with someone else. And the trouble is 22 I knew that wasn't going to work because jointly 23 owned artworks are a nightmare to deal with when 24 it comes to financing. The due diligence is much 25 more complicated and there are many, many, many</p> |
| <p style="text-align: right;">Page 56</p> <p>1 more pitfalls, and I just knew this wasn't going 2 to work, so we declined it. We declined the whole 3 deal. Sorry, we're not going to be able to do 4 this.</p> <p>5 So when Bonito's name came up in 6 association with this appraisal, I told -- I would 7 have told Geza be careful here because this is an 8 ownership -- the ownership is complicated here. 9 And if you're doing an appraisal for a collateral 10 loan, you've got to be really careful when it's 11 joint ownership involved. So I would have 12 counseled him to be cautious.</p> <p>13 Q So I'll get to the substance of the report 14 in a moment, but let me ask, was a conflict check 15 run by Winston when this -- when you brought this 16 matter to the firm?</p> <p>17 A Yes. So when this issue came up, I said 18 to my counterparts at Winston, you know, why 19 didn't we find this appraisal? And they said, 20 well, we ran the checks, the conflict checks, 21 which we do for every appraisal, but the protocol 22 they used is to check names of the owners for each 23 appraisal, to check to see if there's a conflict, 24 and in this case, there was -- all the names that 25 were associated with the current appraisal did not</p> | <p style="text-align: right;">Page 57</p> <p>1 appear in this appraisal.</p> <p>2 Now, the reason they don't use artists 3 names is because you just get so many hits. I 4 mean, if you put Warhol Marilyn in, you get, you 5 know, thousands, you know, many, many versions of 6 that over the years, and you just get too many 7 hits, so it's not meaningful to check through. So 8 when they do their conflict check, they check the 9 names of the owners. That's why this one didn't 10 appear. I mean, because the owners' names didn't 11 match.</p> <p>12 ARBITRATOR KRAMER: So the database 13 includes the artist and the title of the painting?</p> <p>14 THE WITNESS: Yes. That's a good 15 question. It does, but I've been told they're on 16 separate databases. So there's a database with 17 names of all the clients that require appraisals, 18 and there's a database of the art which they use 19 when they're trying to find, you know, to sell 20 someone.</p> <p>21 They didn't crosscheck those. I think in 22 the light of this, they've now changed the 23 protocol, and they do another check on the artist 24 now.</p> <p>25 BY MR. NIKAS:</p> |

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| <p style="text-align: right;">Page 58</p> <p>1 Q And so the conflict check was run, to make</p> <p>2 sure I understand, using all of the parties in</p> <p>3 this case; is that right?</p> <p>4 A That's correct. And none of the names</p> <p>5 showed up.</p> <p>6 Q That's my next question.</p> <p>7 Did any of the names from any of the</p> <p>8 parties in this case show up in their conflict</p> <p>9 database?</p> <p>10 A They tell me no, they didn't. I mean, I</p> <p>11 didn't these checks, but I've asked and they told</p> <p>12 me that none of the names came up.</p> <p>13 Q Okay. Now, when Winston searched its file</p> <p>14 after be being alerted to this report there was</p> <p>15 another report, Exhibit 3, that was located for</p> <p>16 \$30 million.</p> <p>17 Are you aware of that?</p> <p>18 A Yes, I'm aware of that.</p> <p>19 Q Did you recall -- did you know that</p> <p>20 Winston's file in addition to 1.5 million report</p> <p>21 had a \$30 million valuation of the work?</p> <p>22 A No, I didn't know about that.</p> <p>23 Q So you didn't know about either report?</p> <p>24 A No.</p> <p>25 Q Now, we've got these three reports. Only</p> | <p style="text-align: right;">Page 59</p> <p>1 one of them is submitted as your report in this</p> <p>2 case. Between the three, 1.5, your 15, and the</p> <p>3 30, which one most closely approximates, in your</p> <p>4 opinion, the value of this del Sarto?</p> <p>5 A Well, in my opinion, it's the \$15 million.</p> <p>6 Q All right. Now, let's go to the 1.5. Can</p> <p>7 you tell us why -- that's Exhibit 2?</p> <p>8 A Yes.</p> <p>9 Q -- why the 1.5 appraisal does not closely</p> <p>10 approximate the value of the work under the</p> <p>11 condition required by the settlement?</p> <p>12 MR. PRESS: Objection to form.</p> <p>13 THE WITNESS: Well, they both -- these two</p> <p>14 appraisals are done under very different</p> <p>15 assumptions. The \$1.5 million appraisal is an</p> <p>16 appraisal for fair market value for collateral</p> <p>17 purposes and no other purpose. It states that in</p> <p>18 the appraisal.</p> <p>19 And collateral appraisals always take</p> <p>20 necessarily the low end, the lowest possible end</p> <p>21 of what the fair market value could be. I mean,</p> <p>22 you are taking, as it were, the worst case</p> <p>23 scenario because people are lending money against</p> <p>24 the value of the artwork. So the lender, who is</p> <p>25 your client normally, requires you to be</p> |
| <p style="text-align: right;">Page 60</p> <p>1 conservative in your appraisal, and this was</p> <p>2 certainly the case here. I mean, there are other</p> <p>3 factor as well, I mean, which lead on from that</p> <p>4 because you don't just assume. You can't assume</p> <p>5 the work is in good condition. In fact, as Geza</p> <p>6 states in his appraisal, the condition is more</p> <p>7 complicated than that. He doesn't say it's in bad</p> <p>8 condition, but he says it's complicated. So if</p> <p>9 it's complicated, you would assume the worst case</p> <p>10 scenario here, that it's in compromised condition.</p> <p>11 He makes an issue about the -- he raises</p> <p>12 these points in the note.</p> <p>13 ARBITRATOR KRAMER: Can I have a copy of</p> <p>14 that, please?</p> <p>15 MR. NIKAS: Sure.</p> <p>16 THE WITNESS: So on page 8 of the</p> <p>17 appraisal, which is where he writes his write-up,</p> <p>18 he makes the point about the attribution and</p> <p>19 authenticity. It's not published, this work,</p> <p>20 although Freedberg did write his letter, and that</p> <p>21 is actually quite important. I mean, Freedberg</p> <p>22 was a major expert in del Sarto, a very serious</p> <p>23 scholar, but it's the only one. And what Geza is</p> <p>24 saying in this report is, from a collateral point</p> <p>25 of view, you would like to see a consensus of</p> | <p style="text-align: right;">Page 61</p> <p>1 academic opinion supporting the attribution; that</p> <p>2 doesn't exist here.</p> <p>3 So you would have to -- and what he says</p> <p>4 is, therefore, there's work to do. So there's the</p> <p>5 condition, he does not assume is good. The</p> <p>6 authenticity he does not assume as being settled,</p> <p>7 and I think also you need to take into account</p> <p>8 those two del Sartos that were offered by the</p> <p>9 trade that were unsold in relatively recent years,</p> <p>10 that would also give a lender a pause for thought.</p> <p>11 So for all those reasons, and finally, and</p> <p>12 crucially, the conversation that I had with Geza</p> <p>13 was about the ownership issue. You can't</p> <p>14 guarantee this work has a straightforward</p> <p>15 ownership, which, again, would lead you to be</p> <p>16 very, very cautious.</p> <p>17 So for all these reasons, as engagements</p> <p>18 come down on a very cautious -- on the lowest end</p> <p>19 of what you would give a fair market value for</p> <p>20 \$1.5 million.</p> <p>21 BY MR. NIKAS:</p> <p>22 Q Now, page 5, in addition to all of the</p> <p>23 issues you just identified, which were different</p> <p>24 from the assumptions you made, page 5 says at the</p> <p>25 top, the appraiser was asked to prepare a fair</p> |

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| <p style="text-align: right;">Page 62</p> <p>1 market value appraisal from inspection for</p> <p>2 collateral loan purposes. This report is not</p> <p>3 valid for any other purposes.</p> <p>4 Do you see that language?</p> <p>5 A Yes, I do.</p> <p>6 Q Have you used language like that in a</p> <p>7 report before?</p> <p>8 A Oh, yes, yes.</p> <p>9 Q And why do you include language limiting</p> <p>10 the validity of the report to collateral loan</p> <p>11 purposes in these circumstances?</p> <p>12 A Because it's a very specific type of</p> <p>13 appraisal. It's for -- as we say, it's for</p> <p>14 collateral purposes, and there are specific</p> <p>15 factors that limit the appraisal of -- for</p> <p>16 collateral purposes. That doesn't exist in any</p> <p>17 other fair market appraisals, so that's why it's</p> <p>18 specifically for this purpose and no other</p> <p>19 purpose.</p> <p>20 ARBITRATOR KRAMER: Is there a recognized</p> <p>21 percentage of actual value which is used by a</p> <p>22 potential lender to decide how much he'll lend?</p> <p>23 THE WITNESS: Yes. The answer is yes. It</p> <p>24 depends on the firm. When we were at Falcon --</p> <p>25 when I was at Falcon Fine Art, we would lend,</p> | <p style="text-align: right;">Page 63</p> <p>1 generally speaking, 40 percent of the appraised</p> <p>2 value, so we would do a further discount, if you'd</p> <p>3 like, from the appraisal. The appraisal already</p> <p>4 was conservative, and then we would lend</p> <p>5 40 percent of that appraisal.</p> <p>6 ARBITRATOR KRAMER: Is that a reasonable</p> <p>7 standard in the art market for loans?</p> <p>8 THE WITNESS: I think it is. From my</p> <p>9 experience at Christie's, they would lend around</p> <p>10 30 to 40 percent. I've heard some lenders lend up</p> <p>11 to 50 percent, but we would be -- at Falcon Fine</p> <p>12 Art we didn't do that. I think that's fairly</p> <p>13 standard, 40 percent.</p> <p>14 BY MR. NIKAS:</p> <p>15 Q Now, under this report you just indicated</p> <p>16 that the authenticity was not assumed; to the</p> <p>17 contrary, there were issues of authenticity.</p> <p>18 Could that have an impact or does that</p> <p>19 have an impact on the value of the work?</p> <p>20 A Yes, most definitely it does.</p> <p>21 Q You identified issues potentially that the</p> <p>22 report discusses regarding condition.</p> <p>23 If the work is in poor condition, could</p> <p>24 that effect the value of an appraisal for</p> <p>25 collateral loan purposes?</p> |
| <p style="text-align: right;">Page 64</p> <p>1 A Yes. It could have a massive effect on</p> <p>2 the appraisal.</p> <p>3 Q Now, the report doesn't make any</p> <p>4 assumptions about the sitter contrary to your</p> <p>5 report.</p> <p>6 Could the uncertain -- could an</p> <p>7 uncertainty about the sitter impact the value of a</p> <p>8 work under the collateral loan report?</p> <p>9 A Yes, it could. I don't think that's the</p> <p>10 most important consideration because with these</p> <p>11 earlier renaissance portraits it's sometimes hard</p> <p>12 to work out who the sitter is. They're many</p> <p>13 examples I can think of.</p> <p>14 But if you do know the sitter, it adds to</p> <p>15 the -- it would be a premium -- it would give a</p> <p>16 premium on the picture. So it would have an</p> <p>17 effect, yes.</p> <p>18 Q Now, Exhibit 3, if you'll refer to Tab 3,</p> <p>19 it's the \$30 million appraisal. You just told us</p> <p>20 that your \$15 million is accurate. The 1.5</p> <p>21 doesn't apply in this case. You also said the</p> <p>22 \$30 million is not the right number.</p> <p>23 Could you explain to us why this</p> <p>24 \$30 million report is not the accurate number for</p> <p>25 this portrait.</p> | <p style="text-align: right;">Page 65</p> <p>1 A Yes.</p> <p>2 ARBITRATOR KRAMER: Can you remind me</p> <p>3 whether you've seen the \$30 million appraisal</p> <p>4 before you did your appraisal?</p> <p>5 THE WITNESS: I had not. If I had, I</p> <p>6 didn't remember it.</p> <p>7 Well, this is an appraisal for retail</p> <p>8 replacement level, and the retail replacement</p> <p>9 level is the highest level you could justify that</p> <p>10 you think the picture would make in all the right</p> <p>11 circumstances. So it's the other extreme, if</p> <p>12 you'd like. So if the fair market value</p> <p>13 collateral figure is as low as you think you can</p> <p>14 reasonable go, this appraisal at retail</p> <p>15 replacement level is as high as you think you can</p> <p>16 feasibly go. So it's necessarily at the high end.</p> <p>17 BY MR. NIKAS:</p> <p>18 Q Now, in your view, is this figure \$30</p> <p>19 million an attainable sale figure notwithstanding</p> <p>20 the fact that it's much higher than your estimate</p> <p>21 of the reasonable value?</p> <p>22 A Well, for the reasons I've given in my</p> <p>23 report, I would regard this as a pretty high</p> <p>24 figure, but I don't think it's completely mad. I</p> <p>25 mean, if you think about -- well, let's take</p> |

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| <p style="text-align: right;">Page 66</p> <p>1 Pontormo, for example. We've already mentioned</p> <p>2 Pontormo, del Sarto's student and a very fine</p> <p>3 portrait painter. I can think of two portraits by</p> <p>4 Pontormo that have both made over \$30 million, but</p> <p>5 the famous picture portrait of the Halberdier,</p> <p>6 which is in the Getty Museum, sold at Christie's</p> <p>7 in 1989 and made a world record price for an Old</p> <p>8 Master, and it made \$35 million, that would be</p> <p>9 worth even more today. And then there was a more</p> <p>10 recent sale of a Pontormo portrait of a man in a</p> <p>11 red cap that sold privately for well over 40</p> <p>12 million, \$46 million I think it was, in 2015.</p> <p>13 That was subject to an export stop from the UK.</p> <p>14 So yes, it is possible in the right</p> <p>15 circumstances for renaissance portraits of this</p> <p>16 period, those Pontormos were 1520s, 1530s, mainly,</p> <p>17 it's perfectly possible that it can attain prices</p> <p>18 in the 30 million, or even slightly more. So I</p> <p>19 don't regard it as a completely crazy price, but I</p> <p>20 think -- I think it's at the high end for this</p> <p>21 particular work.</p> <p>22 MR. NIKAS: Now, before I move on to</p> <p>23 address the Sotheby's sale of the work and the</p> <p>24 Christie's sale, as a matter of housekeeping I'd</p> <p>25 like to offer Exhibit 17 from our pretrial exhibit</p> | <p style="text-align: right;">Page 67</p> <p>1 list the report of Dr. Hunter as an exhibit in</p> <p>2 this case, sir.</p> <p>3 MR. PRESS: No objection.</p> <p>4 ARBITRATOR KRAMER: Admitted.</p> <p>5 (Whereupon, Exhibit 17 was admitted into</p> <p>6 evidence.)</p> <p>7 THE WITNESS: That's 17?</p> <p>8 MR. NIKAS: 17 is your report.</p> <p>9 THE WITNESS: 17 is my appraisal.</p> <p>10 MR. NIKAS: That's right.</p> <p>11 ARBITRATOR KRAMER: Is Ms. Moore someone</p> <p>12 you have ever heard of.</p> <p>13 THE WITNESS: No, she's not familiar, no.</p> <p>14 BY MR. NIKAS:</p> <p>15 Q Now, after Ms Moore's name it says "AAA."</p> <p>16 Could you tell us what that means?</p> <p>17 A That's the Appraisal Association of</p> <p>18 America or the American Appraisal Association.</p> <p>19 Q And what does that signify?</p> <p>20 A She is a member of the recognized trade</p> <p>21 body of appraisers in America, which is quite a</p> <p>22 prestigious body. It's a good sign.</p> <p>23 Q And on page 5 of the report it says that</p> <p>24 she wrote a report in complete compliance with the</p> <p>25 2016 or 2017 uniformed standards of professional</p> |
| <p style="text-align: right;">Page 68</p> <p>1 appraisal practice written by the appraisal</p> <p>2 standards board of the Appraisal Foundation in</p> <p>3 Washington, D.C.</p> <p>4 Do you see that?</p> <p>5 A Which page are we on?</p> <p>6 Q That's page 5.</p> <p>7 A Page 5 of Exhibit 3?</p> <p>8 Q That's right.</p> <p>9 A Yes, yes, I see it.</p> <p>10 Q Now, could you, please, tell us what those</p> <p>11 standards are, generally speaking?</p> <p>12 A Yes. So the uniform standards of</p> <p>13 professional appraisal practice, we abbreviate</p> <p>14 that to USPAP. All appraisers in America should be</p> <p>15 subject to USPAP standards and regulations. You</p> <p>16 really should take the USPAP exam, which is a day</p> <p>17 long -- actually, it's a two-day course, and at</p> <p>18 the end of it you do an exam, you pass ultimately,</p> <p>19 and then you become USPAP compliant for that</p> <p>20 two-year period, and then you have to do a</p> <p>21 refresher course every two years to keep your</p> <p>22 standards at that -- you know, keep it up to date.</p> <p>23 And this is what -- this is common practice among</p> <p>24 my profession of appraisers that if you're doing</p> <p>25 appraisal's in America, you are expected to be</p> | <p style="text-align: right;">Page 69</p> <p>1 USPAP compliant as we say.</p> <p>2 Q And so is this report under the same</p> <p>3 standard that governs the profession as you're</p> <p>4 saying?</p> <p>5 A Yes.</p> <p>6 MR. PRESS: Objection. How do you know?</p> <p>7 ARBITRATOR KRAMER: Pardon me?</p> <p>8 MR. PRESS: It says it there, but how can</p> <p>9 you attest to -- basically, there's no foundation.</p> <p>10 ARBITRATOR KRAMER: What was your</p> <p>11 question?</p> <p>12 MR. NIKAS: I said was this report --</p> <p>13 ARBITRATOR KRAMER: His report?</p> <p>14 MR. NIKAS: The Moore report, I asked him</p> <p>15 if he's read it; he said he's read it. I asked</p> <p>16 was it prepared under the standards that also</p> <p>17 govern the report that Dr. Hunter prepared in this</p> <p>18 case.</p> <p>19 ARBITRATOR KRAMER: It purports that he</p> <p>20 has no way of knowing whether, in fact, it was.</p> <p>21 MR. PRESS: That's my point.</p> <p>22 ARBITRATOR KRAMER: I's sustaining that</p> <p>23 objection.</p> <p>24 BY MR. NIKAS:</p> <p>25 Q Following your review of this report, did</p> |

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| <p style="text-align: right;">Page 70</p> <p>1 you come across any language or conclusions in it</p> <p>2 that, in your view, violated the standards</p> <p>3 governing your profession?</p> <p>4 A No, I did not.</p> <p>5 MR. NIKAS: Now, before again moving onto</p> <p>6 Sotheby's and doing some housekeeping, I'd like to</p> <p>7 offer what we've identified as Exhibit 3, the</p> <p>8 Moore Report as evidence in the case.</p> <p>9 ARBITRATOR KRAMER: That's accepted as</p> <p>10 well.</p> <p>11 MR. NIKAS: And also Exhibit 2 for the</p> <p>12 purposes we've used it as the 1.5 report.</p> <p>13 ARBITRATOR KRAMER: I didn't wait for</p> <p>14 Mr. PRESS.</p> <p>15 MR. PRESS: I don't know that we have</p> <p>16 testimony as to how we received that report.</p> <p>17 ARBITRATOR KRAMER: Pardon me?</p> <p>18 MR. PRESS: I don't know if there's a</p> <p>19 foundation for how Winston Art Group received the</p> <p>20 Anne Francis Moore report. I'm not sure that --</p> <p>21 he said he didn't look at it in connection with</p> <p>22 his report. I'm not sure that it's relevant at</p> <p>23 all.</p> <p>24 ARBITRATOR KRAMER: Overruled. It's</p> <p>25 accepted also.</p> | <p style="text-align: right;">Page 71</p> <p>1 MR. NIKAS: Thank you.</p> <p>2 (Whereupon, Exhibits 2 and 3 were admitted</p> <p>3 into evidence.)</p> <p>4 BY MR. NIKAS:</p> <p>5 Q Now --</p> <p>6 A Mr. Nikas, can we have a small break?</p> <p>7 ARBITRATOR KRAMER: I was going to do</p> <p>8 that. We've been going for about two hours. Why</p> <p>9 don't we take a mid-morning break.</p> <p>10 How long do you want?</p> <p>11 MR. PRESS: Ten minutes is fine.</p> <p>12 MR. NIKAS: That's fine.</p> <p>13 (Whereupon, a break was taken at</p> <p>14 11:23 a.m.)</p> <p>15 ARBITRATOR KRAMER: Back on the record.</p> <p>16 BY MR. NIKAS:</p> <p>17 Q Dr. Hunter, since your report was issued,</p> <p>18 are you aware that the del Sarto in this case was</p> <p>19 sold at Sotheby's?</p> <p>20 A Yes, I am aware of that.</p> <p>21 Q Are you aware that the respondents have</p> <p>22 used that sale to criticize your estimate of the</p> <p>23 work's value?</p> <p>24 A Yes.</p> <p>25 Q Have you reviewed the lot information</p> |
| <p style="text-align: right;">Page 72</p> <p>1 published on Sotheby's website regarding the sale</p> <p>2 of that work?</p> <p>3 A Yes, I did.</p> <p>4 ARBITRATOR KRAMER: Which website was</p> <p>5 that?</p> <p>6 THE WITNESS: Sotheby's website. They</p> <p>7 have their sales -- you can search, you know,</p> <p>8 previous auctions.</p> <p>9 BY MR. NIKAS:</p> <p>10 Q If you could, please, turn to Exhibit 4.</p> <p>11 A Yes.</p> <p>12 Q This page indicates that the Andrea del</p> <p>13 Sarto was sold at Sotheby's on January 27th, 2022,</p> <p>14 for \$2.198 million.</p> <p>15 Do you see that?</p> <p>16 A I do see that.</p> <p>17 Q It indicates portrait of a man,</p> <p>18 Ottaviano de Medici, question mark, wearing a</p> <p>19 large hat, with a box over the wax seals resting</p> <p>20 on a ledge before him.</p> <p>21 Do you see that?</p> <p>22 A Yes, I do.</p> <p>23 Q Do you believe that is the work that's at</p> <p>24 issue in this case?</p> <p>25 A Yes.</p> | <p style="text-align: right;">Page 73</p> <p>1 Q Now, could you tell me whether the sale</p> <p>2 of this work at Sotheby's for \$2.198 million</p> <p>3 changes your view that the work is worth 15?</p> <p>4 A No, because -- well, I think there were</p> <p>5 reasons why it sold for a lowish, as I would</p> <p>6 regard it, a low figure in that set.</p> <p>7 Q In comparison to your evaluation?</p> <p>8 A Yes.</p> <p>9 Q Could you, please, tell us what the</p> <p>10 reasons were why this work sold at Sotheby's for</p> <p>11 \$2.198 million instead of the higher value that</p> <p>12 you attribute to the work under the conditions set</p> <p>13 forth in the settlement agreement?</p> <p>14 A Well, there were a number of reasons, but</p> <p>15 the main reason is that, as I understand it, there</p> <p>16 was a lawsuit pending that said the owner of the</p> <p>17 del Sarto did not have a proper title to it, and,</p> <p>18 therefore, could not sell it in the sale. That</p> <p>19 was my understanding.</p> <p>20 Q So if we could look at Exhibit 7, please.</p> <p>21 A Yes.</p> <p>22 Q Exhibit 7 is a Supreme Court summons and</p> <p>23 complaint indicates it was filed by Matthew Press</p> <p>24 on January 24, 2022, three days before the</p> <p>25 auction.</p> |

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| <p style="text-align: right;">Page 74</p> <p>1 Do you see that?</p> <p>2 A Yes, I do.</p> <p>3 Q The case was captioned Empire Chesapeake</p> <p>4 Holding, Chelsea Art Holdings against Virginia</p> <p>5 Anne Bonito and Bottom Line Exchange Company.</p> <p>6 Do you see that?</p> <p>7 A Yes, I do.</p> <p>8 Q I'd like to turn --</p> <p>9 ARBITRATOR KRAMER: Can I have a copy?</p> <p>10 MR. NIKAS: Of course, sir.</p> <p>11 BY MR. NIKAS:</p> <p>12 Q Now, if you will, turn to page 23 of 23</p> <p>13 marked in the bottom right corner.</p> <p>14 Do you see that document?</p> <p>15 A Yes.</p> <p>16 Q Who signed the verification that</p> <p>17 accompanies this complaint?</p> <p>18 A Ian Peck signed this.</p> <p>19 Q Okay. This was filed three days before</p> <p>20 the auction; do you see that?</p> <p>21 A Yes, I do.</p> <p>22 Q If you go to paragraph 5, please.</p> <p>23 A Of which page?</p> <p>24 Q It's on page -- it's got two page numbers.</p> <p>25 Let's use the one on the bottom right corner?</p> | <p style="text-align: right;">Page 75</p> <p>1 A Yes.</p> <p>2 Q It says five of 23.</p> <p>3 A Five of 23, yes. Which paragraph?</p> <p>4 Q Paragraph 5. It's at the top of the page.</p> <p>5 A Yes.</p> <p>6 Q I'm going to read three paragraphs from</p> <p>7 this document, and then I'm going to ask you if</p> <p>8 they could have any impact on the value of a</p> <p>9 picture that's being offered for sale while the</p> <p>10 lawsuit for these allegations is pending. Let's</p> <p>11 start with five.</p> <p>12 Five says, in October and November 2021,</p> <p>13 plaintiffs placed Bonito and Bottom Line, as well</p> <p>14 as Sotheby's auction house, on notice of their</p> <p>15 claims and rights under the parties' agreement as</p> <p>16 extended. Nevertheless, Bonito purported to sell</p> <p>17 the painting to Bottom Line, and Bottom Line</p> <p>18 purported to purchase the painting in violation of</p> <p>19 plaintiff's rights and interests. And Bottom Line</p> <p>20 purported to consign the painting to Sotheby's for</p> <p>21 auction on January 27, 2022, without acknowledging</p> <p>22 plaintiff's partial ownership interests, exclusive</p> <p>23 right to purchase the painting, right of first</p> <p>24 refusal, and attempted liens against the painting.</p> <p>25 Thus, Bonito and Bottom Line hoped to sell</p> |
| <p style="text-align: right;">Page 76</p> <p>1 the painting and abscond with the entire proceeds</p> <p>2 and circumvention of plaintiff's rights.</p> <p>3 Do you see that?</p> <p>4 A I do.</p> <p>5 Q If you'll go down to paragraph 7 on that</p> <p>6 same page. It says, as set forth below, the court</p> <p>7 should declare Bonito's purported sale of the</p> <p>8 painting to Bottom Line null and void and order</p> <p>9 Bonito to specifically perform her promise to sell</p> <p>10 the painting exclusively to plaintiffs.</p> <p>11 In addition, the court should enforce</p> <p>12 Bonito's promise to grant plaintiff's a direct</p> <p>13 pro rata ownership interest in the painting in</p> <p>14 proportioned to the amount of the advances</p> <p>15 plaintiff's made to Bonito and the expenses</p> <p>16 plaintiffs incurred in reliant upon Bonito's</p> <p>17 promises.</p> <p>18 Do you see that?</p> <p>19 A Yes, I do.</p> <p>20 Q If you could also please turn to page 16</p> <p>21 of 23, paragraph 52 of the complaint.</p> <p>22 A Yes, I see it.</p> <p>23 Q 52 says, by letter dated November 29,</p> <p>24 2021, plaintiffs notified Sotheby's of their</p> <p>25 claims and rights in connection with the painting.</p> | <p style="text-align: right;">Page 77</p> <p>1 Plaintiffs wrote, quote, 2020 and 2021, Empire</p> <p>2 Chesapeake advanced certain amounts to Virginia</p> <p>3 Bonito towards the purchase of the work and</p> <p>4 incurred certain expenses. These amounts are</p> <p>5 secured by the attached UCC lien on the working.</p> <p>6 As part of the agreement, based upon the amounts</p> <p>7 already advanced, Ms. Bonito granted Empire</p> <p>8 Chesapeake a pro rata direct ownership interest in</p> <p>9 the subject painting by Andrea del Sarto, which</p> <p>10 Empire Chesapeake calculates to be 13 percent of</p> <p>11 the work.</p> <p>12 Furthermore, to induce Empire Chesapeake</p> <p>13 to make advances, Ms. Bonito promised Empire</p> <p>14 Chesapeake the exclusive right to purchase the</p> <p>15 work. Please be advised that Empire Chesapeake</p> <p>16 objects to the sale of the work by Sotheby's in</p> <p>17 any auction or private transaction until Empire</p> <p>18 Chesapeake can be assured that its rights in</p> <p>19 connection with the work will be satisfied.</p> <p>20 Please confirm receipt and contact me at</p> <p>21 your earliest convenience to discuss this matter.</p> <p>22 Do you see those allegations that I've</p> <p>23 just read to you?</p> <p>24 A Yes, I do.</p> <p>25 Q When a lawsuit is pending three days</p> |

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| <p style="text-align: right;">Page 78</p> <p>1 before an auction containing these allegations and</p> <p>2 demands, in your professional experience, does</p> <p>3 that have an impact on the value and salability of</p> <p>4 the work?</p> <p>5 A Yes, it has a catastrophic impact on the</p> <p>6 sale and the value of the work.</p> <p>7 Q Why is that, sir?</p> <p>8 A Well, the auction house would need to</p> <p>9 disclose this information to any prospective buyer</p> <p>10 of the painting, which effectively says you may</p> <p>11 not have good title to this picture if you buy it</p> <p>12 in the sale, and that would put off almost every</p> <p>13 single person bidding on it.</p> <p>14 And, in fact, in these situations,</p> <p>15 normally, the auction house withdraws the lot.</p> <p>16 This is just too complicated. This is a mess.</p> <p>17 And you would withdraw the lot, ask the parties to</p> <p>18 sort out who the owner is, come back to us when</p> <p>19 you've sorted it out and we can offer it then</p> <p>20 because this is just really bad.</p> <p>21 ARBITRATOR KRAMER: Do you have any</p> <p>22 information about why Sotheby's went ahead with</p> <p>23 the sale?</p> <p>24 THE WITNESS: Well, that is a very good</p> <p>25 question, and I don't know, but I noticed there</p> | <p style="text-align: right;">Page 79</p> <p>1 was an irrevocable bid on this picture which means</p> <p>2 that there was a -- prior to the sale, a client,</p> <p>3 often the dealer -- often dealers do this, they</p> <p>4 make an irrevocable bid which is published so that</p> <p>5 the auction house can say this picture is going to</p> <p>6 sell. It's a like a form of guarantee sort of.</p> <p>7 And they would have to have gone to the person or</p> <p>8 dealer who had put the irrevocable bid in and</p> <p>9 explain the situation to them. The person who put</p> <p>10 the irrevocable bid must have said I'm okay with</p> <p>11 it.</p> <p>12 ARBITRATOR KRAMER: Sure. You don't have</p> <p>13 any -- it's your --</p> <p>14 THE WITNESS: This is what I assume, and</p> <p>15 then Sotheby's said okay, we'll go ahead with the</p> <p>16 sale, and clearly no one else bid.</p> <p>17 ARBITRATOR KRAMER: Okay. You don't --</p> <p>18 from personal knowledge you don't know what</p> <p>19 particularly happened?</p> <p>20 THE WITNESS: No, but they would have to</p> <p>21 have told that person this is the case. They</p> <p>22 would have to have done it. No one else bid. It</p> <p>23 was sold to the irrevocable bid. That's what</p> <p>24 happened.</p> <p>25 BY MR. NIKAS:</p> |
| <p style="text-align: right;">Page 80</p> <p>1 Q So when you say a lawsuit like this is</p> <p>2 catastrophic to value, in your -- from your</p> <p>3 professional experience, does it surprise you that</p> <p>4 the work still sold for 2.198 million?</p> <p>5 A Yes. I think it's a small miracle that it</p> <p>6 sold at all. I think in a way it's testimony to</p> <p>7 the quality and importance of this work that did</p> <p>8 sell in these circumstances.</p> <p>9 ARBITRATOR KRAMER: You don't one way or</p> <p>10 the other whether the irrevocable bid -- do you</p> <p>11 know whether the irrevocable bid was at</p> <p>12 2.19 million?</p> <p>13 THE WITNESS: Well, it would have --</p> <p>14 that's with the premium, so it would have had to</p> <p>15 have been at -- it would have had to have been at</p> <p>16 the -- at or before the reserve. Sotheby's would</p> <p>17 have sold it at the reserve if there was no other</p> <p>18 bid.</p> <p>19 ARBITRATOR KRAMER: Do you know whether</p> <p>20 the irrevocable bid was made before or after</p> <p>21 Sotheby's learned about the lawsuit?</p> <p>22 THE WITNESS: Well, it was published in</p> <p>23 the catalog, so it must have been before.</p> <p>24 ARBITRATOR KRAMER: It was in the catalog?</p> <p>25 THE WITNESS: Yes. No, wait. Hold on a</p> | <p style="text-align: right;">Page 81</p> <p>1 second. I don't know about the catalog. It was</p> <p>2 published on online.</p> <p>3 ARBITRATOR KRAMER: Before the auction?</p> <p>4 THE WITNESS: Before the auction.</p> <p>5 ARBITRATOR KRAMER: Okay. Do we have that</p> <p>6 page? I think we looked at it. I'm not sure I</p> <p>7 saw it.</p> <p>8 MR. NIKAS: Yes. I'm coming back to it.</p> <p>9 ARBITRATOR KRAMER: Okay. Continue with</p> <p>10 your examination.</p> <p>11 MR. NIKAS: Thank you.</p> <p>12 BY MR. NIKAS:</p> <p>13 Q Let's go the page -- we've got a few of</p> <p>14 them. We've got Exhibit 4, and this is the</p> <p>15 general lot information.</p> <p>16 A Yes, that's abbreviated. I mean, that's</p> <p>17 the list of the work sold, I think.</p> <p>18 Q Now, when you reviewed --</p> <p>19 MR. NIKAS: And I offer Exhibit 4 as the</p> <p>20 general lot information.</p> <p>21 ARBITRATOR KRAMER: Mr. Press, are you</p> <p>22 okay with that?</p> <p>23 MR. PRESS: Yes. No objection.</p> <p>24 ARBITRATOR KRAMER: It's admitted.</p> <p>25 (Whereupon, Exhibit 4 was admitted into</p> |

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| <p style="text-align: right;">Page 82</p> <p>1 evidence.)</p> <p>2 BY MR. NIKAS:</p> <p>3 Q You told us that a lawsuit can be</p> <p>4 catastrophic to the sale price. I see in the</p> <p>5 description of this, it says, Ottaviano de Medici,</p> <p>6 question mark.</p> <p>7 Do you see that?</p> <p>8 A Yes, I do.</p> <p>9 Q Do you know why a question mark would be</p> <p>10 included in an auction listing in your experience</p> <p>11 at auction houses?</p> <p>12 A Yes, because they don't know for sure that</p> <p>13 it's a Ottaviano de Medici. They're mainly</p> <p>14 suggesting that it might have been.</p> <p>15 Q Now, could that have an impact on the</p> <p>16 value of the picture as well?</p> <p>17 A Well, if you knew for sure it was a</p> <p>18 Ottaviano de Medici, it would have a premium, so</p> <p>19 yes, it would affect it.</p> <p>20 Q Now, Dr. Simon's report says that the work</p> <p>21 was not fully confirmed as authentic because only</p> <p>22 Dr. Freedberg's letter was referenced as opposed</p> <p>23 to a much broader group of historians.</p> <p>24 From your review of the Sotheby's page,</p> <p>25 did you see anyone other than Freedberg giving an</p> | <p style="text-align: right;">Page 83</p> <p>1 opinion about authenticity of the work?</p> <p>2 A Yes. The -- Sotheby's employed or</p> <p>3 contracted an academic called Linda Wolk Simon,</p> <p>4 W-O-L-K, who is a visiting professor at New York</p> <p>5 University, I think, and she wrote the essay in</p> <p>6 the catalog. It's a quite good essay, actually,</p> <p>7 but in that essay she does not mention any other</p> <p>8 academic or curator who supports the attribution.</p> <p>9 Q Does the fact that there was only one</p> <p>10 expert identified as opposed to the much broader</p> <p>11 group that would be necessary to fully confirm it</p> <p>12 have a potential impact on the value of the</p> <p>13 picture?</p> <p>14 A Yes. I mean, as we saw previously with</p> <p>15 that other Andrea del Sarto where the attribution</p> <p>16 was questioned, it was published as copy, and then</p> <p>17 it was reattributed to del Sarto. Yes, that has</p> <p>18 an affect on it. I mean, if works are not fully</p> <p>19 attributed, that could have an affect on value,</p> <p>20 yes.</p> <p>21 Q If you could go to respondent's Exhibit 5.</p> <p>22 A Oh, yes. Okay, yes.</p> <p>23 Q And you mentioned that when you reviewed</p> <p>24 the Sotheby's lot there was an indication that</p> <p>25 there was an irrevocable bid?</p> |
| <p style="text-align: right;">Page 84</p> <p>1 A Yes.</p> <p>2 Q Is that the reference on the second page</p> <p>3 of the first document that you were talking about?</p> <p>4 A Yes.</p> <p>5 ARBITRATOR KRAMER: I'm sure what exhibit</p> <p>6 it is.</p> <p>7 MR. NIKAS: The respondent's Exhibit 5.</p> <p>8 It's the longer version of the Sotheby's page.</p> <p>9 THE WITNESS: So yes, this is a sale room</p> <p>10 notice. Please note there was an irrevocable bid</p> <p>11 on this lot.</p> <p>12 MR. NIKAS: And I'll offer respondent's</p> <p>13 Exhibit 5 to make record clear that we've got the</p> <p>14 entire file.</p> <p>15 MR. PRESS: No objection.</p> <p>16 ARBITRATOR KRAMER: Admitted.</p> <p>17 (Whereupon, Exhibit 5 was admitted into</p> <p>18 evidence.)</p> <p>19 BY MR. NIKAS:</p> <p>20 Q Now, you have told us about lawsuit</p> <p>21 impact, the authenticity impact, the sitter</p> <p>22 impact.</p> <p>23 Is there anything else about the sale, the</p> <p>24 Sotheby's sale, that you believe materially lowers</p> <p>25 that sale price compared to the fair market value?</p> | <p style="text-align: right;">Page 85</p> <p>1 A All those things that you just mentioned</p> <p>2 can have a catastrophic affect on the sale price.</p> <p>3 I guess the additional factor would be the</p> <p>4 condition. As we -- I don't have an opinion on</p> <p>5 the condition. I haven't seen the picture, but</p> <p>6 people that saw the picture may have come to their</p> <p>7 own conclusions about the condition of the work.</p> <p>8 I don't know.</p> <p>9 Q Now, in Mr. Peck's preliminary injunction</p> <p>10 testimony, months and months ago now, he testified</p> <p>11 that it would be important to sell a work like</p> <p>12 this under a consignment agreement where the work</p> <p>13 it marketed around the world, given significant</p> <p>14 PR, and the painting was traveled around the world</p> <p>15 and shown to collectors. And the respondents,</p> <p>16 likewise, testified that they would agree with</p> <p>17 that approach, and failing to do that would impact</p> <p>18 value.</p> <p>19 Do you see any of that activity done in</p> <p>20 connection with this Sotheby's sale?</p> <p>21 MR. PRESS: Objection. You can't just</p> <p>22 characterize his testimony. I think you really</p> <p>23 need to show it. I mean, I think it</p> <p>24 mischaracterizes testimony from the hearing.</p> <p>25 MR. NIKAS: I can read the testimony.</p> |

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| <p style="text-align: right;">Page 86</p> <p>1 ARBITRATOR KRAMER: Can you do that?</p> <p>2 BY MR. NIKAS:</p> <p>3 Q Exhibit 6, from Mr. Peck's testimony,</p> <p>4 page 81:</p> <p>5 "QUESTION: Is it a given that you've</p> <p>6 given an agreement that was satisfactory to ACG --</p> <p>7 one of the respondents -- with Christie's?</p> <p>8 "ANSWER: No.</p> <p>9 "QUESTION: What would the consigning</p> <p>10 agreements with Christie's potentially look like?</p> <p>11 What were some important terms that would be</p> <p>12 relevant to an agreement like that?</p> <p>13 "ANSWER: Well, we would want them to have</p> <p>14 provided possibly a loan, an advanced loan against</p> <p>15 the consignment, a loan which would have been</p> <p>16 repaid by the sale of the painting. We may have</p> <p>17 wanted them to provide a minimum guarantee for the</p> <p>18 sale price, which is a common product at this</p> <p>19 level of the market.</p> <p>20 We would have wanted to have an extensive</p> <p>21 list of requirements for them to market the paint,</p> <p>22 which would have included a substantial amount of</p> <p>23 money spent on marketing PR and publicity, as well</p> <p>24 as a commitment on their part to physically take</p> <p>25 the painting wherever they would need it to go to</p> | <p style="text-align: right;">Page 87</p> <p>1 be shown to collectors."</p> <p>2 Do you see any evidence from the Sotheby's</p> <p>3 sales that the work was treated in the way that</p> <p>4 the parties would have wanted it to be treated</p> <p>5 under the settlement agreement?</p> <p>6 A I don't see any evidence -- I didn't see</p> <p>7 the picture in London. I don't think they showed</p> <p>8 in London. I don't think they showed it anywhere.</p> <p>9 Q Did you see any marketing or PR in</p> <p>10 connection with the picture?</p> <p>11 A No, I did not.</p> <p>12 Q And do you agree with Mr. Peck that that</p> <p>13 could have a significant impact on value?</p> <p>14 A Yes. I agreed with Mr. Peck that this is</p> <p>15 a sort of picture that requires special treatment</p> <p>16 from the auction houses of major work of a high</p> <p>17 renaissance. You would expect them to do proper</p> <p>18 marketing for it. Yes, I would expect that.</p> <p>19 Q In light of what you told us, do you think</p> <p>20 the Sotheby's sale is a reasonable indication of</p> <p>21 the work's fair market value under the conditions</p> <p>22 required by the settlement agreement?</p> <p>23 A No, I don't. I think it was under sold</p> <p>24 significantly.</p> <p>25 Q Now, the respondents have also criticized</p> |
| <p style="text-align: right;">Page 88</p> <p>1 your report for not accounting for the April 20,</p> <p>2 2021, Christie's sale of Old Master works.</p> <p>3 Are you familiar with the fact that</p> <p>4 they've criticized you for that reason?</p> <p>5 A Yes.</p> <p>6 Q Now, Christie's sale in April of 2021, did</p> <p>7 that sale include any del Sartos?</p> <p>8 A No, it didn't. It included a Sebastiano</p> <p>9 del Piombo, P-I-O-M-B-O, who is another high</p> <p>10 renaissance artist, but no other works by Andrea</p> <p>11 del Sarto, no, not that you can expect from that.</p> <p>12 That's rare.</p> <p>13 Q Now, in the auction, did you see any</p> <p>14 comparable works that were sold that were</p> <p>15 comparable to the work at issue in this case, del</p> <p>16 Sarto.</p> <p>17 A Well, the Sebastiano was comparable. I</p> <p>18 mean, there was a Cranach. There were other</p> <p>19 works. I mean, nothing exactly comparable, no,</p> <p>20 but there were -- like all sales, I mean, like all</p> <p>21 Old Master sales they some good works and some not</p> <p>22 so good works in the sale.</p> <p>23 Q I noticed you didn't identify any</p> <p>24 comparables in your report from the Christie's</p> <p>25 April 2021 report, was there a reason for that?</p> | <p style="text-align: right;">Page 89</p> <p>1 A Well, I didn't think there were any</p> <p>2 particularly relevant comparables in that.</p> <p>3 Q Now, when an auction occurs that doesn't</p> <p>4 include the work at issue and doesn't include any</p> <p>5 comparables, is it appropriate under the standards</p> <p>6 that govern your profession to use that auction as</p> <p>7 measure of a work's value?</p> <p>8 A No, no. That wouldn't make sense, no.</p> <p>9 Q Now, the respondents also argued that if</p> <p>10 the del Sarto were included it would be exposed,</p> <p>11 or one of the most prominent works, and therefore</p> <p>12 it could yield a lower value than it would</p> <p>13 otherwise yield with greater works alongside it.</p> <p>14 Is that true in every case?</p> <p>15 A I have heard this argument put forward</p> <p>16 many times when I worked in the auction rooms and</p> <p>17 when I worked at Gurr Johns actually, when we were</p> <p>18 consigning pictures for sale. And I'm never</p> <p>19 really that convinced by this argument. I mean,</p> <p>20 some sales have lots of high value works in them,</p> <p>21 and they do well or not, if the case may be, on</p> <p>22 individual circumstances. Other sales have one</p> <p>23 really extensive work and not many others. It's</p> <p>24 hard to generalize.</p> <p>25 I mean, just to take the example we've</p> |

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| <p style="text-align: right;">Page 90</p> <p>1 already seen, the Botticelli, in the Sotheby's</p> <p>2 sale in January of 2021, the one that made \$92</p> <p>3 million, that was way, way out there in that sale.</p> <p>4 I mean, that was the most expensive singular sale</p> <p>5 by a country mile. Nothing else came close to it.</p> <p>6 In fact, the whole sale, that sale in January</p> <p>7 2021, made \$114 million, so 80 percent of the sale</p> <p>8 was in the Botticelli. This happens sometimes.</p> <p>9 I mean, I can think of another example.</p> <p>10 The July sale in 2021, in London, Christie's July</p> <p>11 sale, also had a similarly expensive -- not</p> <p>12 expensive as the Botticelli, but it had a very,</p> <p>13 very nice Bellotto, a view of Verona that sold for</p> <p>14 10 million pounds, \$14 million. Again, way, way</p> <p>15 out there, way in advance of anything else in the</p> <p>16 sale. The next highest price was \$3 million, I</p> <p>17 think it was.</p> <p>18 So sometimes sales have one style lot;</p> <p>19 sometimes if you're lucky you'll get a sale where</p> <p>20 there's lots of style lots. It doesn't really --</p> <p>21 you can't extrapolate from that whether the</p> <p>22 picture would have sold or not. It doesn't work</p> <p>23 like that.</p> <p>24 Q Can you predict from looking at the works</p> <p>25 that were ultimately included in the lot, or in</p> | <p style="text-align: right;">Page 91</p> <p>1 the sale, can you predict, looking at the</p> <p>2 Christie's sale, what the del Sarto would have</p> <p>3 sold for in that auction?</p> <p>4 A No, that's impossible.</p> <p>5 MR. NIKAS: I have no further questions</p> <p>6 for Dr. Hunter.</p> <p>7 ARBITRATOR KRAMER: And Mr. PRESS, would</p> <p>8 you like to cross examine Dr. Hunter?</p> <p>9 MR. PRESS: Give me one second.</p> <p>10 C R O S S - E X A M I N A T I O N</p> <p>11 BY MR. PRESS:</p> <p>12 Q Dr. Hunter, directing your attention to</p> <p>13 your report which, I believe, is Exhibit 17.</p> <p>14 A Yes, I'm there.</p> <p>15 Q Okay. It says on the cover of your report</p> <p>16 that it's a fair market value appraisal; do you</p> <p>17 see that?</p> <p>18 A Yes, I do.</p> <p>19 Q And "fair market value" that has a</p> <p>20 specific meaning to you, right?</p> <p>21 A Yes.</p> <p>22 Q If you turn to the -- if you would turn to</p> <p>23 page 8 of your report it says type of valuation?</p> <p>24 ARBITRATOR KRAMER: Page what? I'm sorry.</p> <p>25 I didn't hear you. What page number?</p> |
| <p style="text-align: right;">Page 92</p> <p>1 MR. PRESS: This is page 8 of his report.</p> <p>2 BY MR. PRESS:</p> <p>3 Q Do you see that?</p> <p>4 A I do.</p> <p>5 Q It says type of valuation?</p> <p>6 A Yes.</p> <p>7 Q Okay. And it says fair market value; do</p> <p>8 you see that?</p> <p>9 A I do.</p> <p>10 Q And I'm just going to read this into the</p> <p>11 record. It says, the fair market value defined by</p> <p>12 the IRS as stated in the treasury regulations</p> <p>13 Sections 20.2031-1B, as the price at which the</p> <p>14 property would change hands between a willing</p> <p>15 buyer and a willing seller neither being under any</p> <p>16 compulsion to buy or sell and both having</p> <p>17 reasonable knowledge of relevant facts.</p> <p>18 Did I read that correctly?</p> <p>19 A Yes, you did.</p> <p>20 Q Is that the standards of a fair market</p> <p>21 value appraisal?</p> <p>22 A That is the definition of a fair market</p> <p>23 value, yes.</p> <p>24 Q Okay. Now, returning to the first page of</p> <p>25 Exhibit 17 of your report.</p> | <p style="text-align: right;">Page 93</p> <p>1 A Yes.</p> <p>2 Q Okay. It says, this appraisal is for</p> <p>3 litigation purposes, right?</p> <p>4 A Yes.</p> <p>5 Q Okay. That's just the purpose of the</p> <p>6 appraisal, right?</p> <p>7 A That's the purpose of the appraisal.</p> <p>8 Q Okay. You didn't change your definition</p> <p>9 of fair market value on account of it being for</p> <p>10 litigation purposes?</p> <p>11 A No.</p> <p>12 Q Okay. Now, returning to page 8 of your</p> <p>13 report, okay, Exhibit 17. Now, it says type of</p> <p>14 appraisal and USPAP complaint; do you see that?</p> <p>15 A Yes, I do.</p> <p>16 ARBITRATOR KRAMER: What page are we</p> <p>17 looking at?</p> <p>18 MR. PRESS: Page 8 of Exhibit 17, his</p> <p>19 report.</p> <p>20 ARBITRATOR KRAMER: Got it.</p> <p>21 BY MR. PRESS:</p> <p>22 Q Okay. It says, this report is considered</p> <p>23 an unrestricted appraisal according to rules of</p> <p>24 USPAP of 2021.</p> <p>25 Do you see that?</p> |

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| <p style="text-align: right;">Page 94</p> <p>1 A Yes, I do.</p> <p>2 Q So in preparing this report you sought to</p> <p>3 comply with the USPAP rules and guideline; is that</p> <p>4 correct?</p> <p>5 A That's correct.</p> <p>6 Q Okay. And turning to page 3 of your</p> <p>7 report.</p> <p>8 A Yes.</p> <p>9 Q Okay. And your signed certification?</p> <p>10 A Yes.</p> <p>11 Q Okay. Now, at the top you say, I, the</p> <p>12 undersigned, on behalf of Winston Art Group being</p> <p>13 duly sworn, hereby depose and certify.</p> <p>14 Did I read that correctly?</p> <p>15 A You did.</p> <p>16 Q Okay. And so you were use issuing this</p> <p>17 report on behalf of Winston Art Group, correct?</p> <p>18 A Correct.</p> <p>19 Q Okay. And towards the bottom of this page</p> <p>20 is a bullet, it says the appraiser's analysis,</p> <p>21 opinions, and conclusions were developed, and this</p> <p>22 report has been prepared in conformity with 2021,</p> <p>23 USPAP appraisal practice, correct?</p> <p>24 A Correct.</p> <p>25 Q Okay. I contracted it a bit, but</p> | <p style="text-align: right;">Page 95</p> <p>1 otherwise, that's correct.</p> <p>2 And you said a couple bullets up, okay,</p> <p>3 you stated that the appraiser has not performed</p> <p>4 service as an appraiser, or in any other capacity</p> <p>5 for the property that is subject of this report</p> <p>6 within the three-year period immediately preceding</p> <p>7 acceptance of this assignment.</p> <p>8 Do you see that?</p> <p>9 A I do see that.</p> <p>10 Q And you now agree that that certification</p> <p>11 is not true, correct?</p> <p>12 A Yes.</p> <p>13 Q Okay. Now, under USPAP rules, are you</p> <p>14 familiar with the requirement of record-keeping?</p> <p>15 A Yes.</p> <p>16 Q Okay. And you understand that under USPAP</p> <p>17 there's actually a rule called the record-keeping</p> <p>18 rule.</p> <p>19 Are you familiar with that rule?</p> <p>20 A Yes, I am.</p> <p>21 Q Okay. And that rule requires an appraiser</p> <p>22 to maintain something called a work file, right?</p> <p>23 A Yes, that's correct.</p> <p>24 Q Okay. And what is the contents of the</p> <p>25 work file?</p> |
| <p style="text-align: right;">Page 96</p> <p>1 A It's the research that you've undertaken,</p> <p>2 if you've spoken to people you might, you know,</p> <p>3 make a note of what they told you. It's anything</p> <p>4 to do with the appraisal or the valuation you've</p> <p>5 done, you would keep records of that in your file.</p> <p>6 Q You would agree that it would be important</p> <p>7 to keep anything material to an appraisal in the</p> <p>8 work file, right?</p> <p>9 A Yes.</p> <p>10 Q Okay. And in the work file, one of the</p> <p>11 purposes of the file under USPAP rules is to</p> <p>12 enable an appraiser or an appraising company to</p> <p>13 comply with the ethical rules of USPAP, right?</p> <p>14 A Yes.</p> <p>15 Q Okay. And now you said -- you testified</p> <p>16 that you provided information to Geza von Habsburg</p> <p>17 in connection with his 2019 appraisal of the</p> <p>18 painting, correct?</p> <p>19 A That's correct.</p> <p>20 Q And you said that the information you gave</p> <p>21 him was information that you believe was material</p> <p>22 to the value of the painting, right?</p> <p>23 A Yes, I think it helpful to him. I mean,</p> <p>24 he clearly felt it was helpful. He put my name in</p> <p>25 the appraisal as somebody who helped him.</p> | <p style="text-align: right;">Page 97</p> <p>1 Q And actually, when he put your name in the</p> <p>2 appraisal that's actually something that's</p> <p>3 required under USPAP guidelines if somebody makes</p> <p>4 a contribution to a report, right?</p> <p>5 A Yes. It would include anyone that gave</p> <p>6 him material assistance in writing the report.</p> <p>7 That's what Geza put in the report, yes.</p> <p>8 Q He wouldn't have put you in there if he</p> <p>9 did not believe that you provided material</p> <p>10 assistance to his appraisal, correct?</p> <p>11 A Yes, that's correct.</p> <p>12 Q Okay. And in fact, we can look at it if</p> <p>13 you would like, but your resume, rather CV, is</p> <p>14 attached as an exhibit to the 2019 appraisal,</p> <p>15 right?</p> <p>16 A Yes. Whenever you give any assistance, if</p> <p>17 you're mentioning somebody that gave assistance,</p> <p>18 you would -- Winston would normally put that</p> <p>19 person's CV in the appraisal as well.</p> <p>20 Q Okay. Now, in your appraisal report,</p> <p>21 okay --</p> <p>22 A Yeah.</p> <p>23 Q -- the 2021 appraisal.</p> <p>24 A Yes.</p> <p>25 Q On page 4, it states that the managing</p> |

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| <p style="text-align: right;">Page 98</p> <p>1 director of Winston Art Group, Elizabeth von</p> <p>2 Habsburg, provided significant, personal appraisal</p> <p>3 assistance by reviewing the values and cataloguing</p> <p>4 for the property that is subject of this report.</p> <p>5 Do you see that?</p> <p>6 A Yes, I do.</p> <p>7 Q And likewise -- well, strike that</p> <p>8 question.</p> <p>9 And that disclosure is included here on</p> <p>10 grounds of the USPAP rules that we just discussed,</p> <p>11 correct?</p> <p>12 A Yes.</p> <p>13 Q And because she made the significant</p> <p>14 contribution to the report, she needed to be</p> <p>15 disclosed in the report itself, correct?</p> <p>16 A Yes, correct.</p> <p>17 Q Okay. And what was the actual work that</p> <p>18 Elizabeth von Habsburg did in connection with the</p> <p>19 2021 appraisal?</p> <p>20 A It states it there. She reviewed values</p> <p>21 and the catalog. She didn't provide me with any</p> <p>22 research and she didn't have any input into the</p> <p>23 process of making the report. She really reviewed</p> <p>24 it after I had done it.</p> <p>25 Q Okay. And what does that mean, if you can</p> | <p style="text-align: right;">Page 99</p> <p>1 break that down for those of us who are not</p> <p>2 practicing appraisers? What does reviewing the</p> <p>3 values and catalogs mean?</p> <p>4 A Sure. So she would have got my report,</p> <p>5 she would have looked through it, she would have</p> <p>6 read it through, looked at my conclusions, and she</p> <p>7 would have either agreed with them or not agreed</p> <p>8 with them, but in this case, she agreed with them,</p> <p>9 didn't change anything that she felt having</p> <p>10 reviewed it, she should go in the report as well.</p> <p>11 Q Okay. The review she did was before the</p> <p>12 report was issued; is that fair to say?</p> <p>13 A Yes. It would be after the report that's</p> <p>14 been prepared by me, but before it's issued to the</p> <p>15 client, yes.</p> <p>16 Q And Ms. von Habsburg, she's the -- her</p> <p>17 title is managing director of Winston Art Group,</p> <p>18 right?</p> <p>19 A That's correct.</p> <p>20 Q Is she, in fact, the chief executive of</p> <p>21 Winston Art Group?</p> <p>22 A I don't know. I think she's the managing</p> <p>23 director.</p> <p>24 Q Is there somebody senior to her in the</p> <p>25 hierarchy?</p> |
| <p style="text-align: right;">Page 100</p> <p>1 A No, she's the most senior person.</p> <p>2 Q And does she have jurisdiction over all</p> <p>3 the appraisals that are done by Winston Art Group?</p> <p>4 A Yes. I think her position in the company</p> <p>5 would be -- that would be true, yes.</p> <p>6 Q Okay. And Ms. von Habsburg, she and Geza</p> <p>7 von Habsburg are husband and wife, correct?</p> <p>8 A That's correct.</p> <p>9 Q Did you discuss -- did Ms. von Habsburg</p> <p>10 mention to you at any point that Geza had done a</p> <p>11 valuation of the same painting?</p> <p>12 A No, she didn't.</p> <p>13 Q Now, you said that in your testimony just</p> <p>14 now, that in connection with the 2019 appraisal,</p> <p>15 okay, you provided information to Geza concerning</p> <p>16 the fact that Virginia Bonito was a partial owner</p> <p>17 of the painting, correct?</p> <p>18 A Yes. This was discussed in a phone</p> <p>19 conversation.</p> <p>20 Q And you said, I believe what your</p> <p>21 testimony was that you should be careful of</p> <p>22 Virginia Bonito, correct?</p> <p>23 A Yes, because I remembered her name from</p> <p>24 this previous occasion I had dealings with her,</p> <p>25 yes.</p> | <p style="text-align: right;">Page 101</p> <p>1 Q And so when you said you did a conflict</p> <p>2 check, did you not check Virginia Bonito in</p> <p>3 connection with this painting?</p> <p>4 A No, because Winston -- first of all, I</p> <p>5 didn't do the checks. The checks are done by --</p> <p>6 in the office of Winston.</p> <p>7 Q Okay.</p> <p>8 A And they would have checked the names of</p> <p>9 the people associated with this appraisal, and</p> <p>10 Virginia Bonito's name doesn't appear there.</p> <p>11 That's why it didn't show up.</p> <p>12 Q Now, we looked at, and we'll be discussing</p> <p>13 it more later, the Anne Frances Moore report,</p> <p>14 insurance inventory purposes report?</p> <p>15 A Yes.</p> <p>16 Q Now, you said that was found in the files</p> <p>17 of Winston Art Group, correct?</p> <p>18 A Yes.</p> <p>19 Q At what point did you find that?</p> <p>20 A When they alerted to me to the -- to</p> <p>21 Geza's appraisal. That must have been in</p> <p>22 Geza's -- in the files for his appraisal for the</p> <p>23 2019 appraisal.</p> <p>24 Q Okay. And that report states that it's</p> <p>25 prepared for Virginia Anne Bonito, right?</p> |

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| <p style="text-align: right;">Page 102</p> <p>1 A Yes, I think so. I mean, it's in -- what</p> <p>2 number is it? It's three, wasn't it? Let me just</p> <p>3 check that.</p> <p>4 ARBITRATOR KRAMER: Yes, prepared for</p> <p>5 Virginia Anne Bonito.</p> <p>6 THE WITNESS: Yes, there you go. Prepared</p> <p>7 for Virginia Anne Bonito, that's correct.</p> <p>8 BY MR. PRESS:</p> <p>9 Q Now, I want to direct your attention to</p> <p>10 your -- to the 2019 appraisal --</p> <p>11 A Yes.</p> <p>12 Q -- which is Exhibit 2.</p> <p>13 A Yes.</p> <p>14 Q All right. Now, that appraisal states</p> <p>15 that it's a fair market value appraisal, correct?</p> <p>16 A Yes.</p> <p>17 Q Okay. And if I direct your attention to</p> <p>18 page 7 of Exhibit 2 --</p> <p>19 A Yes.</p> <p>20 Q Let's wait until the arbitrator gets</p> <p>21 there.</p> <p>22 It says type of valuation there, correct?</p> <p>23 A It does, yes.</p> <p>24 Q Okay. And it says fair market value?</p> <p>25 A Yes, it does.</p> | <p style="text-align: right;">Page 103</p> <p>1 Q Okay. And I'm not going to burden the</p> <p>2 record with this, but do you agree that the</p> <p>3 definition in the language there concerning fair</p> <p>4 market value is the same as the language that came</p> <p>5 from your expert report?</p> <p>6 A Yes, it's exactly the same.</p> <p>7 Q And that's because the definition of fair</p> <p>8 market value is the same, correct?</p> <p>9 A Yes.</p> <p>10 Q Okay. You're not contending in this case</p> <p>11 that there's a different fair market value in the</p> <p>12 context of litigation versus in some other</p> <p>13 context, are you?</p> <p>14 MR. NIKAS: Objection.</p> <p>15 BY MR. PRESS:</p> <p>16 Q You can answer.</p> <p>17 ARBITRATOR KRAMER: Overruled.</p> <p>18 THE WITNESS: Fair market value -- fair</p> <p>19 market values are a range of values. It's not</p> <p>20 just one value. So it definitely depends on the</p> <p>21 purpose of the valuation. You could be at the low</p> <p>22 end of a fair market value or the high end of a</p> <p>23 fair market value. Yes, it can be vary.</p> <p>24 BY MR. PRESS:</p> <p>25 Q But the standard described in both these</p> |
| <p style="text-align: right;">Page 104</p> <p>1 reports is the same, correct?</p> <p>2 A Correct.</p> <p>3 Q Now, turning to page 4 of the 2019 expert</p> <p>4 report.</p> <p>5 A Yes.</p> <p>6 Q Now, it says the Old Master specialist Tim</p> <p>7 Hunter provided significant, personal property</p> <p>8 appraisal assistance by assisting with the</p> <p>9 research and valuation for the property that is</p> <p>10 the subject of this report.</p> <p>11 Did I read that correctly?</p> <p>12 A You did.</p> <p>13 Q Now, it says you provided significant</p> <p>14 appraisal assistance; do you see that?</p> <p>15 A I do.</p> <p>16 Q And it also says that you did research and</p> <p>17 valuation; do you see that?</p> <p>18 A No, it doesn't say that. It says I</p> <p>19 assisted with research and valuation.</p> <p>20 Q Okay. All right. And assisting with</p> <p>21 research would indicate that you performed</p> <p>22 research on comparable works, correct?</p> <p>23 A No, it doesn't suggest that.</p> <p>24 Q It doesn't mean -- did you perform</p> <p>25 research in connection with the attribution of the</p> | <p style="text-align: right;">Page 105</p> <p>1 work?</p> <p>2 A No.</p> <p>3 Q No. And as for valuation, this indicates</p> <p>4 that you did work on the valuation of that</p> <p>5 property?</p> <p>6 A No, it doesn't, no.</p> <p>7 Q No?</p> <p>8 A No.</p> <p>9 Q Okay. But the assistance Mr. von Habsburg</p> <p>10 found to be significant, correct?</p> <p>11 A Yes. I'm flattered that Geza found my</p> <p>12 assistance significant. I mean, this is standard</p> <p>13 wording, I have to say, and had I seen that, I was</p> <p>14 not shown the final -- I was not shown a draft of</p> <p>15 the appraisal. I think I would have --</p> <p>16 ARBITRATOR KRAMER: I think you've</p> <p>17 answered he question.</p> <p>18 BY MR. PRESS:</p> <p>19 Q Turning back to page 3 of the Exhibit 2.</p> <p>20 A Yes.</p> <p>21 Q Now --</p> <p>22 ARBITRATOR KRAMER: Which page are we</p> <p>23 looking at? I'm sorry.</p> <p>24 MR. PRESS: Page 3.</p> <p>25 BY MR. PRESS:</p> |

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| <p style="text-align: right;">Page 106</p> <p>1 Q That's the sign certification, okay.</p> <p>2 Mr. von Habsburg, he also signed this report on</p> <p>3 behalf of Winston Art Group, correct?</p> <p>4 A That's correct.</p> <p>5 Q Okay. And he said -- in the second bullet</p> <p>6 he said this appraisal represents the appraiser's</p> <p>7 best judgment and opinion as to the fair market</p> <p>8 value of the subject property.</p> <p>9 Do you see that?</p> <p>10 A Yes, I do.</p> <p>11 Q And you don't have any reason to disagree</p> <p>12 with that statement, do you?</p> <p>13 A No, I don't.</p> <p>14 Q Now, at the bottom of this page it states</p> <p>15 that the appraiser has made a personal inspection</p> <p>16 of the property that is the subject of this</p> <p>17 report, correct?</p> <p>18 A Yes.</p> <p>19 Q Okay. So Mr. von Habsburg actually</p> <p>20 physically inspected the painting, correct?</p> <p>21 A That's correct.</p> <p>22 Q And in fact, if you turn to page 5, it</p> <p>23 states that he -- that he and an appraisal</p> <p>24 associate named Andrea Lander inspected the</p> <p>25 property in the Bronx on October 4, 2019.</p> | <p style="text-align: right;">Page 107</p> <p>1 Do you see that?</p> <p>2 A Yes, I do.</p> <p>3 Q Now, I think -- I believe what you said is</p> <p>4 you said you spoke to Mr. von Habsburg, I think</p> <p>5 you mentioned two phone calls; do you recall that?</p> <p>6 A Yes.</p> <p>7 Q Okay. So one phone call you said you told</p> <p>8 him to be careful of Ms. Bonito, correct?</p> <p>9 A Yes.</p> <p>10 Q What about the other phone call?</p> <p>11 A I don't remember what we discussed in that</p> <p>12 phone call.</p> <p>13 Q Okay. Did you have any e-mail</p> <p>14 communications with Mr. von Habsburg in connection</p> <p>15 with the 2019 appraisal?</p> <p>16 A I don't remember.</p> <p>17 Q Okay. You haven't checked?</p> <p>18 A I did a check, but I couldn't find</p> <p>19 anything.</p> <p>20 ARBITRATOR KRAMER: You did check or</p> <p>21 didn't check?</p> <p>22 THE WITNESS: I did check, yes.</p> <p>23 BY MR. PRESS:</p> <p>24 Q Did you ever have any discussion with</p> <p>25 Andrea Lander concerning the property?</p> |
| <p style="text-align: right;">Page 108</p> <p>1 A Not that I can remember. I mean, it would</p> <p>2 be doubtful that I would have discussed it with</p> <p>3 Andrea.</p> <p>4 Q And it says further on on page 5, it says</p> <p>5 the examiner examined the property with a</p> <p>6 flashlight and under available daylight in situ.</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q And it also says, whenever necessary items</p> <p>10 were examined -- whenever necessary items were</p> <p>11 examined, it was with a magnifying lens.</p> <p>12 Do you see that?</p> <p>13 A Yes, I do.</p> <p>14 Q And it says a black light was used to</p> <p>15 examine the fine art for the presence of signs of</p> <p>16 any visible condition issues had been noted in the</p> <p>17 narrative when applicable.</p> <p>18 Do you see that?</p> <p>19 A Yes, I do.</p> <p>20 Q And you weren't able to do any of those</p> <p>21 things in connection with the 2021 appraisal,</p> <p>22 correct?</p> <p>23 A Sadly, I wasn't able to do that.</p> <p>24 Q Now, it also says at the bottom of that</p> <p>25 paragraph that a -- that the client provided a</p> | <p style="text-align: right;">Page 109</p> <p>1 condition report; do you see that?</p> <p>2 A Yes, I do.</p> <p>3 Q Do you know who the client was?</p> <p>4 A No, I didn't know who the client was.</p> <p>5 Q Do you know where the client got the</p> <p>6 condition report from?</p> <p>7 A So we're talking about the 2019 appraisal?</p> <p>8 Q Yes.</p> <p>9 A No, I don't.</p> <p>10 Q Now, you believe that the del Sarto could</p> <p>11 be worth \$15 million?</p> <p>12 A I do believe that.</p> <p>13 Q That's a significant painting, correct?</p> <p>14 A It's a significant painting?</p> <p>15 Q That would be a significant painting?</p> <p>16 A It would be a significant painting, yes.</p> <p>17 Q And you testified that you've simply</p> <p>18 forgotten any involvement in the appraisal of that</p> <p>19 painting in 2019?</p> <p>20 A Yes, because my input was so small. I</p> <p>21 didn't -- I didn't research it. I didn't give</p> <p>22 valuation for it. I didn't see it. I had a phone</p> <p>23 conversation with Geza. It was very minimal, my</p> <p>24 input into that.</p> <p>25 Q Yet Geza thought it material to include a</p> |

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| <p style="text-align: right;">Page 110</p> <p>1 consultation with you in the 2019 report?</p> <p>2 A He did, and --</p> <p>3 ARBITRATOR KRAMER: Try to just answer.</p> <p>4 THE WITNESS: Yeah, I did.</p> <p>5 BY MR. PRESS:</p> <p>6 Q Now, you mentioned that the conflict check</p> <p>7 was done on the painting, right?</p> <p>8 A No, on the appraisal.</p> <p>9 Q On the appraisal?</p> <p>10 A Yeah.</p> <p>11 Q When you say that -- I'm sorry.</p> <p>12 The conflict check was done concerning</p> <p>13 whether the -- whether Winston Art had appraised</p> <p>14 the painting before, correct?</p> <p>15 MR. NIKAS: Objection. That's not his</p> <p>16 testimony.</p> <p>17 ARBITRATOR KRAMER: I think I understand</p> <p>18 that the conflict check, and procedures apparently</p> <p>19 have changed, is based on the seller, not on the</p> <p>20 painting itself.</p> <p>21 BY MR. PRESS:</p> <p>22 Q There is a three-year rule in USPAP rules</p> <p>23 that you cite in your report, correct, Dr. Hunter?</p> <p>24 A Yes, that's correct.</p> <p>25 Q And that rule states that any appraisal,</p> | <p style="text-align: right;">Page 111</p> <p>1 any prior appraisal of the same work needs to</p> <p>2 be -- within the past three years needs to be</p> <p>3 disclosed, correct?</p> <p>4 A That's correct.</p> <p>5 Q And that's the rule that you cite to in</p> <p>6 your signed certification, right?</p> <p>7 A That's correct.</p> <p>8 Q Okay. And your testimony -- strike that.</p> <p>9 Now, the condition of an Old Master</p> <p>10 painter is an important factor in its valuation,</p> <p>11 right?</p> <p>12 A Yes.</p> <p>13 Q Okay. Is it fair to say it's one of the</p> <p>14 most important factors?</p> <p>15 A It's one of the important factors, yes.</p> <p>16 Q And you concede you never saw the</p> <p>17 condition of the painting yourself, correct?</p> <p>18 A That's correct.</p> <p>19 Q And you never hired a conservator to</p> <p>20 examine the painting?</p> <p>21 A No, I didn't.</p> <p>22 Q And you've never been able to assess the</p> <p>23 state of the restoration of the painting, correct?</p> <p>24 A That's correct, I haven't been able to.</p> <p>25 Q Everything you received has been second or</p> |
| <p style="text-align: right;">Page 112</p> <p>1 third hand, is that fair to say, concerning the</p> <p>2 condition of the painting?</p> <p>3 A Yes, that's correct.</p> <p>4 Q Now, you respect the professionalism of</p> <p>5 Geza von Habsburg, don't you?</p> <p>6 A Yes, I do.</p> <p>7 Q He's a capable appraiser of Old Master</p> <p>8 paintings, isn't he?</p> <p>9 A Yes, he is.</p> <p>10 Q Okay. Do you have any reason to doubt</p> <p>11 Geza von Habsburg's determination concerning the</p> <p>12 condition of the painting in 2019?</p> <p>13 A I don't doubt it. Geza viewed the picture</p> <p>14 himself and he stated that he finds the condition</p> <p>15 complicated. I think that's a perfectly</p> <p>16 reasonable position to hold.</p> <p>17 Q Okay. I mean, turning to his report,</p> <p>18 which is Exhibit 2.</p> <p>19 A Yes.</p> <p>20 Q He -- just directing your attention to --</p> <p>21 sorry, that's on page 8.</p> <p>22 A The photo.</p> <p>23 Q That's for the arbitrator.</p> <p>24 It says -- he says that a condition report</p> <p>25 accompanies the work?</p> | <p style="text-align: right;">Page 113</p> <p>1 A Say that again.</p> <p>2 Q If you turn to page 8.</p> <p>3 A A condition report accompanies the work.</p> <p>4 Yes, I see that.</p> <p>5 Q Do you know what the condition report was</p> <p>6 that he had looked at? Did you ever see that?</p> <p>7 A No, I don't think that he included it in</p> <p>8 the report so I have no idea.</p> <p>9 Q Okay.</p> <p>10 ARBITRATOR KRAMER: I didn't hear that</p> <p>11 question. I'm sorry.</p> <p>12 MR. PRESS: The question was: Did you --</p> <p>13 have ever seen the condition report that's</p> <p>14 referenced here.</p> <p>15 ARBITRATOR KRAMER: Okay.</p> <p>16 BY MR. PRESS:</p> <p>17 Q Now, he says -- Geza says, an examination</p> <p>18 of a pre-restoration X ray shows that apart from</p> <p>19 the obvious paint loss only a very thin paint</p> <p>20 surface is survived from the original.</p> <p>21 Do you see that?</p> <p>22 A Yes.</p> <p>23 Q Okay. And that would be -- that's a</p> <p>24 negative statement about the condition of the</p> <p>25 work, isn't it?</p> |

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| <p style="text-align: right;">Page 114</p> <p>1 A So if you could just point out that</p> <p>2 sentence again.</p> <p>3 Q Sure. It's in the middle. An examination</p> <p>4 of the pre-restoration X ray shows that apart from</p> <p>5 the obvious paint losses, only a very thin paint</p> <p>6 surface survived from the original.</p> <p>7 Do you see that?</p> <p>8 A Yes, I do. Yes, that's mildly negative.</p> <p>9 Q But that's a negative statement about the</p> <p>10 condition?</p> <p>11 A Yes, if it's a decaying paint surface. I</p> <p>12 mean, it depends how the artist intended to -- I</p> <p>13 mean, some paint surfaces are thin, so it's not</p> <p>14 necessarily negative, but it could be construed as</p> <p>15 that, yes.</p> <p>16 Q And it says that there's little or no</p> <p>17 report about the recent restorations in the newest</p> <p>18 varnish layer, including the present surfaces?</p> <p>19 A Yes, I see that.</p> <p>20 Q And that lack of information was of</p> <p>21 concern, isn't it?</p> <p>22 A It could be, yes.</p> <p>23 Q Okay. And then he says, in this</p> <p>24 appraiser's opinion the subject is not as stated</p> <p>25 in the appraisal of Anne Frances Moore in</p> | <p style="text-align: right;">Page 115</p> <p>1 excellent condition for its age.</p> <p>2 Do you see that?</p> <p>3 A I see that.</p> <p>4 Q Geza does not think that the painting is</p> <p>5 in excellent condition, does he?</p> <p>6 A That's how I would read that.</p> <p>7 Q And further down he says, compared to</p> <p>8 other well-preserved 16th Century works with</p> <p>9 intact original surfaces, the present work, albeit</p> <p>10 optically very pleasing and accepted by Sydney</p> <p>11 Freedberg as an autographed painting by del Sarto,</p> <p>12 seems to lack the immediacy of his other</p> <p>13 masterpieces and appears flat in comparison.</p> <p>14 Do you see that?</p> <p>15 A I do see that.</p> <p>16 Q Okay. And that is also a negative</p> <p>17 statement about the condition of the painting;</p> <p>18 isn't it?</p> <p>19 A That would be negative, yes.</p> <p>20 Q Now, further down in the discussion of</p> <p>21 attribution --</p> <p>22 A Can we pause for a loo break?</p> <p>23 ARBITRATOR KRAMER: Sure.</p> <p>24 (Whereupon, a break was taken at</p> <p>25 12:34 p.m.)</p> |
| <p style="text-align: right;">Page 116</p> <p>1 ARBITRATOR KRAMER: All right, Mr. Press.</p> <p>2 BY MR. PRESS:</p> <p>3 Q All right. We're still on page 8 of the</p> <p>4 2019 appraisal?</p> <p>5 A Yes.</p> <p>6 Q And there's a -- just taking it from the</p> <p>7 top of attribution to authenticity?</p> <p>8 A Yes.</p> <p>9 Q It says, Dr. Virginia Anne Bonito had done</p> <p>10 extensive research on the subject work.</p> <p>11 Unfortunately, the list of expert opinions implied</p> <p>12 by Dr. Bonito fall short of what serious</p> <p>13 collectors would require in order to feel that</p> <p>14 this work is accepted as confirmed to be by the</p> <p>15 artist in the market.</p> <p>16 Do you see that?</p> <p>17 A I do.</p> <p>18 Q And do you have any disagreement with</p> <p>19 Geza's observation?</p> <p>20 A No. I think it's a fair observation.</p> <p>21 Q Okay. And further down it says that, you</p> <p>22 know, that Dr. Freedberg's certificate is</p> <p>23 important, but he says the lack of modern written</p> <p>24 scholarly opinion by a recognized del Sarto or</p> <p>25 Italian painting experts, and a lack of literature</p> | <p style="text-align: right;">Page 117</p> <p>1 and exhibition history outside of the commercial</p> <p>2 training house exhibition is an additional</p> <p>3 deterrent.</p> <p>4 Did I read that correctly?</p> <p>5 A You did.</p> <p>6 Q And you don't disagree with that</p> <p>7 statement, do you?</p> <p>8 A I don't disagree with that, no.</p> <p>9 Q And you looked at the Freedberg</p> <p>10 endorsement, correct?</p> <p>11 A I did, yes.</p> <p>12 Q And that's the handwritten letter, right?</p> <p>13 A Yes.</p> <p>14 Q That was never published publicly, was it?</p> <p>15 A Not to my knowledge, no.</p> <p>16 Q Okay. So the public at large doesn't even</p> <p>17 know about the Freedberg endorsement, does it?</p> <p>18 A No.</p> <p>19 MR. NIKAS: Objection. As of what time?</p> <p>20 MR. PRESS: The reference to --</p> <p>21 MR. NIKAS: Sorry. I have an objection.</p> <p>22 He asked a question as to whether the public knows</p> <p>23 about the letter and --</p> <p>24 MR. PRESS: He already answered.</p> <p>25 MR. NIKAS: And I objected to the</p> |

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| <p style="text-align: right;">Page 118</p> <p>1 question.</p> <p>2 ARBITRATOR KRAMER: Can you rephrase the</p> <p>3 question and put a timeframe on it, please.</p> <p>4 BY MR. PRESS:</p> <p>5 Q Okay. Well, in 2020 -- strike that.</p> <p>6 In the year 2021, the public didn't have</p> <p>7 any knowledge concerning the Freedberg</p> <p>8 endorsement, correct?</p> <p>9 A The sale of the picture was in 2022,</p> <p>10 right?</p> <p>11 Q That's correct.</p> <p>12 A So in 2021, there was no publication where</p> <p>13 Freedberg's letter would have been mentioned,</p> <p>14 that's true.</p> <p>15 Q Okay. And now, further down it says in</p> <p>16 that next paragraph, it says, Andrea del Sarto's</p> <p>17 works are almost exclusively on panel and no</p> <p>18 explanation is available as to the fact that this</p> <p>19 work is on canvas.</p> <p>20 Do you see that?</p> <p>21 A I do see that.</p> <p>22 Q Do you agree with that statement?</p> <p>23 A Not necessarily.</p> <p>24 Q Have you seen an explanation for why this</p> <p>25 work is on canvas?</p> | <p style="text-align: right;">Page 119</p> <p>1 A I don't know how you'd find an explanation</p> <p>2 for that, but it's not true to say that -- whilst</p> <p>3 it's true to say that most of del Sarto's works on</p> <p>4 panel, they're not all on panel. There are works</p> <p>5 on canvas. The famous picture in the national</p> <p>6 gallery, the portrait of the man, that's on</p> <p>7 canvas. I don't even need to be there. I mean,</p> <p>8 this is on canvas as well. It's perfectly</p> <p>9 understandable. It's rare, but it's not unknown.</p> <p>10 Q Okay. Further down in this paragraph is a</p> <p>11 statement that you eluded to in your direct</p> <p>12 testimony that there have been several campaigns</p> <p>13 of restoration on this work leading to a question</p> <p>14 as to whether the condition may be more complex</p> <p>15 than is presented.</p> <p>16 Do you see that?</p> <p>17 A I do see that.</p> <p>18 Q And you mentioned that yourself before,</p> <p>19 correct?</p> <p>20 A Did I? I can't remember what context, but</p> <p>21 I don't have a problem with that. That's a</p> <p>22 perfectly acceptable statement to make.</p> <p>23 Q And the question -- this -- he's saying</p> <p>24 this raises a further question as to the</p> <p>25 attribution and authenticity of the work, correct?</p> |
| <p style="text-align: right;">Page 120</p> <p>1 A Well, I think it raises the question on</p> <p>2 the condition which is a separate question from</p> <p>3 the authenticity.</p> <p>4 Q Okay. Well, doesn't it also go to the</p> <p>5 authenticity to the extent that del Sarto's works</p> <p>6 might be expected to be done on wood panel rather</p> <p>7 than on canvas?</p> <p>8 A No. I think this is a false argument.</p> <p>9 The fact that it's on canvas does not lead me, or</p> <p>10 should not lead anyone to therefore think the</p> <p>11 picture is inauthentic because it is known that</p> <p>12 del Sarto did use canvas on occasions.</p> <p>13 Q Okay.</p> <p>14 A Art, historically, that's just not</p> <p>15 consistent.</p> <p>16 Q But he said that it raises questions,</p> <p>17 that's fair to say, correct?</p> <p>18 A Yes, but they're questions -- they're art</p> <p>19 historical questions. Why did del Sarto use a</p> <p>20 canvas here rather than a panel? That's a</p> <p>21 question to ask. It doesn't pertain authenticity.</p> <p>22 Q Okay. Turning to the next page of the</p> <p>23 report.</p> <p>24 A Yes.</p> <p>25 Q At the top, the first paragraph says, Geza</p> | <p style="text-align: right;">Page 121</p> <p>1 says, more research is necessary before the</p> <p>2 attribution settlement. More expert opinions need</p> <p>3 to be sought, and ideally, significant scholars</p> <p>4 should publish subject work.</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q You don't disagree with that statement, do</p> <p>8 you?</p> <p>9 A I don't disagree with that.</p> <p>10 Q Okay. And he's saying that the expert</p> <p>11 opinions and the publication is needed in order to</p> <p>12 condition the public to accepting the painting as</p> <p>13 a legitimate work of del Sarto, right?</p> <p>14 A When you say "public," what do you mean</p> <p>15 specifically?</p> <p>16 Q Okay. I am saying -- withdraw the</p> <p>17 question.</p> <p>18 Are you saying that the expert opinions in</p> <p>19 scholastic work would help to authenticate the</p> <p>20 work to the art-buying public, correct?</p> <p>21 A Yes, correct.</p> <p>22 Q And there's also a reference to an</p> <p>23 exhibition on the page before at New York Trinity</p> <p>24 House?</p> <p>25 A Yes.</p> |

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| <p style="text-align: right;">Page 122</p> <p>1 Q Are you familiar with that exhibition</p> <p>2 space?</p> <p>3 ARBITRATOR KRAMER: Where is that</p> <p>4 reference, please?</p> <p>5 MR. PRESS: It's in the middle of page 8.</p> <p>6 ARBITRATOR KRAMER: We're back to page 8?</p> <p>7 MR. PRESS: Yes.</p> <p>8 THE WITNESS: I haven't visited it, but I</p> <p>9 know it's on the end of the first paragraph of the</p> <p>10 note. I'm aware of them. I haven't visited it,</p> <p>11 but I know it's a commercial gallery.</p> <p>12 BY MR. PRESS:</p> <p>13 Q And are you aware that that gallery is</p> <p>14 affiliated with Virginia Anne Bonito?</p> <p>15 A I didn't -- I don't know that, no, but she</p> <p>16 mentioned it to me in my discussions with her, you</p> <p>17 know, back in 2015 or so. She mentioned that the</p> <p>18 Jacopo Sansovino that she was trying to get me to</p> <p>19 loan against was also in Trinity House.</p> <p>20 Q Okay.</p> <p>21 A So I knew there was f some connection.</p> <p>22 Q Okay. And other than Trinity House which</p> <p>23 has some affiliation with Ms. Bonito, the painting</p> <p>24 hadn't been exhibited anywhere?</p> <p>25 A That's correct.</p> | <p style="text-align: right;">Page 123</p> <p>1 Q Okay. Now, in on page --now, back to</p> <p>2 page 9.</p> <p>3 A Yes.</p> <p>4 Q Okay. There is a discussion entitled</p> <p>5 value; do you see that?</p> <p>6 A Yes, I do.</p> <p>7 Q Okay. And we'll get to the comps in a</p> <p>8 moment, but it says in 2015 this painting was</p> <p>9 appraised by another appraiser at 30 million for</p> <p>10 both fair market value and retail replacement</p> <p>11 value is chiefly based on the price of \$37 million</p> <p>12 achieved by Raphael's portrait of Lorenzo de</p> <p>13 Medici. Do you see that?</p> <p>14 A Yes, I do.</p> <p>15 Q Now, we looked at -- you understand this</p> <p>16 to be a reference to Anne Frances Moore's</p> <p>17 appraisal?</p> <p>18 A Yes, I do.</p> <p>19 Q We looked at that appraisal, we can look</p> <p>20 at it again, but that appraisal, in fact, was just</p> <p>21 a retail replacement value appraisal, correct?</p> <p>22 A That's my understanding, and that's what</p> <p>23 it says on the front page of that appraisal.</p> <p>24 Q That wasn't a fair market value appraisal,</p> <p>25 was it?</p> |
| <p style="text-align: right;">Page 124</p> <p>1 A I didn't think so.</p> <p>2 Q Okay. And it says, continuing on page 9,</p> <p>3 it says the Raphael painting was regarding by all</p> <p>4 the main authorities as autographed. However, the</p> <p>5 prices of Raphael's paintings are in a different</p> <p>6 league than those under del Sarto. The prices are</p> <p>7 exponentially higher than del Sarto.</p> <p>8 Do you see that?</p> <p>9 A Yes.</p> <p>10 Q And you agree with that statement,</p> <p>11 correct?</p> <p>12 A I partially agree with that statement.</p> <p>13 Q Okay. You testified yourself that Raphael</p> <p>14 is the more prized artist than del Sarto, correct?</p> <p>15 A That's correct, yes.</p> <p>16 Q And so you don't dispute the -- Geza's</p> <p>17 statement that the Raphael painting was regarded</p> <p>18 by all the main authorities as autographed,</p> <p>19 correct?</p> <p>20 A Well, we did discuss this painting among</p> <p>21 the comparables that I used, and that painting --</p> <p>22 questions had been asked about that painting in</p> <p>23 the past, but it's true to say that today all main</p> <p>24 authorities do not --</p> <p>25 Q Okay. Now, Geza continues, he says</p> | <p style="text-align: right;">Page 125</p> <p>1 there's little or comparable value among the works</p> <p>2 of del Sarto in a period of auction.</p> <p>3 Do you see that?</p> <p>4 A Yes.</p> <p>5 Q And he discusses the chalk head study that</p> <p>6 you mentioned?</p> <p>7 A He does, yes.</p> <p>8 Q And he said the next highest price is for</p> <p>9 an oil, Madonna child, which sold at Sotheby's for</p> <p>10 \$1.1 million; do you see that?</p> <p>11 A Yes.</p> <p>12 Q And that was also something that you</p> <p>13 included in your comps?</p> <p>14 A Correct.</p> <p>15 Q And then you said that several</p> <p>16 attributable works recently failed to sell; do you</p> <p>17 see those two?</p> <p>18 A Correct, yes.</p> <p>19 Q And those are the two that you mentioned</p> <p>20 that were bought in that were among your comps,</p> <p>21 correct?</p> <p>22 A That's correct.</p> <p>23 Q And so then he concludes, so this would</p> <p>24 suggest that even if documented was fully</p> <p>25 autographed by noted scholars of the subject, a</p> |

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| <p style="text-align: right;">Page 126</p> <p>1 fair market value in the range of two to three</p> <p>2 million for the work would be appropriate.</p> <p>3 Do you see that?</p> <p>4 A I do see that.</p> <p>5 Q Okay. And he continues, that the fact</p> <p>6 that much work still needs to be done, would mean</p> <p>7 that the present fair market value is somewhat</p> <p>8 less than this range. Therefore, the appraiser</p> <p>9 signed has signed a fair market value with current</p> <p>10 scholarship of 1.5 million.</p> <p>11 Do you see that?</p> <p>12 A I do, sir.</p> <p>13 Q Okay. So he's signing it based on the</p> <p>14 current scholarship and the condition of the work;</p> <p>15 fair to say?</p> <p>16 A Yes.</p> <p>17 Q Okay. He is -- he did not find the</p> <p>18 Raphael painting as a persuasive comp, did he?</p> <p>19 A No, he didn't.</p> <p>20 Q All right. If you could turn to pages 12</p> <p>21 and 13 of the 2019 report.</p> <p>22 A Yes.</p> <p>23 Q It looks at five comps; do you see those?</p> <p>24 A Yes.</p> <p>25 Q Okay. There's the Raphael that we</p> | <p style="text-align: right;">Page 127</p> <p>1 discussed before, and then it's the head of</p> <p>2 St. Joseph, that's the drawing that you</p> <p>3 considered, correct?</p> <p>4 A Correct.</p> <p>5 Q And then it's the -- it's really two other</p> <p>6 works, three auctions, but two other works,</p> <p>7 correct?</p> <p>8 A Correct.</p> <p>9 Q And I think as you said on the second</p> <p>10 page, on page 13, that's the Madonna child when it</p> <p>11 sold for -- I'm sorry, Item 3, when it sold for</p> <p>12 1.1 million, correct?</p> <p>13 A That's correct.</p> <p>14 Q Okay. And then items four and five were</p> <p>15 put up for auction, but were bought in?</p> <p>16 A That's correct.</p> <p>17 Q Okay. So they didn't sell?</p> <p>18 A That's correct.</p> <p>19 Q Now, Geza did not include the other comps</p> <p>20 that you chose to include in your 2021 appraisal,</p> <p>21 correct?</p> <p>22 A He didn't include that.</p> <p>23 Q Okay. And looking at these, the -- we'll</p> <p>24 do this on another page.</p> <p>25 Okay. Just actually turning to page 15 of</p> |
| <p style="text-align: right;">Page 128</p> <p>1 Exhibit 2.</p> <p>2 A Yes.</p> <p>3 Q There's a discussion that says market</p> <p>4 conditions for midlevel and entry level material</p> <p>5 mix.</p> <p>6 Do you see that?</p> <p>7 A I do.</p> <p>8 Q Okay. It says, as one commentator wrote,</p> <p>9 the market is increasingly bifurcated between the</p> <p>10 very finest and all the rest.</p> <p>11 Do you see that?</p> <p>12 A I do.</p> <p>13 Q And it states, thus, middle and lower</p> <p>14 levels of the market particularly works familiar</p> <p>15 auctions for those in less than exceptional</p> <p>16 conditions remains difficult.</p> <p>17 Do you see that?</p> <p>18 A I do.</p> <p>19 Q Do you agree with those statements?</p> <p>20 A It's a generalization, but yes, in</p> <p>21 general, yes.</p> <p>22 Q Now, let's now move back to Exhibit 17,</p> <p>23 your 2021 appraisal.</p> <p>24 Now, we discussed the conflict check that</p> <p>25 you testified that Winston Art Group performed in</p> | <p style="text-align: right;">Page 129</p> <p>1 connection with the submission of the appraisal</p> <p>2 assignment?</p> <p>3 A Yes.</p> <p>4 Q But did you yourself make any affirmative</p> <p>5 efforts to determine whether the painting had been</p> <p>6 appraised Winston Art Group before?</p> <p>7 A What time scale are we talking here?</p> <p>8 Q I'm talking about -- well, after you</p> <p>9 were -- did there come a time where you were</p> <p>10 approached to do an appraisal of the del Sarto,</p> <p>11 involved in this arbitration?</p> <p>12 A Sorry, what was the question again?</p> <p>13 ARBITRATOR KRAMER: When were you first</p> <p>14 approached to provide an expert opinion on the</p> <p>15 appraisal.</p> <p>16 THE WITNESS: Oh, I see. November, the</p> <p>17 fall 2021.</p> <p>18 ARBITRATOR KRAMER: November 2021?</p> <p>19 THE WITNESS: When I was asked to do the</p> <p>20 valuation of this picture?</p> <p>21 BY MR. PRESS:</p> <p>22 Q Correct.</p> <p>23 A Yes, I think it was November of 2021. I</p> <p>24 need to check, but it was autumn of 2021.</p> <p>25 Q Okay. And you knew you would need to</p> |

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| <p style="text-align: right;">Page 130</p> <p>1 certify that you hadn't previously -- that Winston</p> <p>2 Art Group, rather, hadn't previously appraised the</p> <p>3 work in the past three years, correct?</p> <p>4 A That's correct.</p> <p>5 Q Okay. So my question is, what affirmative</p> <p>6 efforts did you make to determine whether Winston</p> <p>7 Art Group had previously appraised that painting</p> <p>8 within the past three years?</p> <p>9 A Well, I would have relied on the fact that</p> <p>10 I know Winston would to their conflict checks, and</p> <p>11 they would tell me if it had come up. There was</p> <p>12 nothing else I could do. I didn't have any</p> <p>13 records of this other appraisal in my files. I</p> <p>14 don't keep those kind of records, and I don't have</p> <p>15 access to Winston's database so I couldn't do</p> <p>16 these checks. I relied on Winston Art Group to do</p> <p>17 the checks for me.</p> <p>18 Q Okay. Turning to -- turn to page 5 of</p> <p>19 your report.</p> <p>20 A Yes.</p> <p>21 Q At the bottom it says that -- it says, the</p> <p>22 appraiser is given adequate time to research the</p> <p>23 property.</p> <p>24 Do you see that paragraph at the bottom?</p> <p>25 A Yes, I do.</p> | <p style="text-align: right;">Page 131</p> <p>1 Q It says, the information and material, it</p> <p>2 says, is maintained in the work file at the</p> <p>3 offices of Winston Art Group and is available upon</p> <p>4 request.</p> <p>5 Do you see that?</p> <p>6 A Yes, I do.</p> <p>7 Q Okay. And to your knowledge, is the work</p> <p>8 file still available at Winston Art Group for this</p> <p>9 appraisal?</p> <p>10 A As far as I know it is, yes.</p> <p>11 Q Okay. And to your understanding, the work</p> <p>12 file in connection with the 2019 appraisal would</p> <p>13 also be available in the office of Winston Art</p> <p>14 Group?</p> <p>15 A As far as I know, yes.</p> <p>16 Q Okay. Now turning to page 6.</p> <p>17 A Yes.</p> <p>18 Q There's a discussion of extraordinary</p> <p>19 assumptions.</p> <p>20 A Yes.</p> <p>21 Q Now, an extraordinary assumption is an</p> <p>22 assumption of a fact which is uncertain to an</p> <p>23 appraiser, correct?</p> <p>24 A Yes.</p> <p>25 Q Okay. That's actually definition in the</p> |
| <p style="text-align: right;">Page 132</p> <p>1 USPAP rules, correct?</p> <p>2 A That's correct.</p> <p>3 Q Okay. And there's also something called a</p> <p>4 hypothetical assumption.</p> <p>5 Do you know what that is?</p> <p>6 A Yes, I do.</p> <p>7 Q Okay. And a hypothetical assumption is an</p> <p>8 assumption of facts which is known to be contrary</p> <p>9 to the state of facts, correct?</p> <p>10 A That's correct.</p> <p>11 Q And in your expert report, you made some</p> <p>12 extraordinary assumptions?</p> <p>13 A I did.</p> <p>14 Q Okay. And those are the assumptions</p> <p>15 that -- and you said that if false, an</p> <p>16 extraordinary assumption would alter your opinion</p> <p>17 and conclusions, correct?</p> <p>18 A That's correct.</p> <p>19 Q And that's true about this report as well?</p> <p>20 A That's true of all USPAP reports, yes.</p> <p>21 Q So if any of the assumptions that you made</p> <p>22 as extraordinary assumptions were not correct that</p> <p>23 would change your conclusion, correct?</p> <p>24 A Yes, that's correct.</p> <p>25 Q And the assumptions that you've made were</p> | <p style="text-align: right;">Page 133</p> <p>1 in -- this is on page 6 of your report?</p> <p>2 A Yes.</p> <p>3 Q You said there's no dispute as to type,</p> <p>4 correct?</p> <p>5 A Well, the ownership comes into the</p> <p>6 hypothetical conditions -- the hypothetical</p> <p>7 assumptions. That's where I discuss -- that's</p> <p>8 where I disclose the ownership issue, but under</p> <p>9 the extraordinary assumptions, I think it's the</p> <p>10 condition, the attribution.</p> <p>11 Q Well, let's just go through it here. It</p> <p>12 says for purposes of this assignment at the</p> <p>13 instruction of the client, the appraiser has made</p> <p>14 the following extraordinary assumption.</p> <p>15 Do you see that?</p> <p>16 A Yes.</p> <p>17 Q Okay. And so you made these assumptions</p> <p>18 at the direction of Gary Greenberg, correct?</p> <p>19 A Yes, through counsel, yes.</p> <p>20 Q Okay. Now, to the extent that an</p> <p>21 extraordinary assumption has to be something</p> <p>22 that's uncertain, correct?</p> <p>23 A That's correct.</p> <p>24 Q Okay. So if you knew something to be</p> <p>25 otherwise, then you can't make that an</p> |

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| <p style="text-align: right;">Page 134</p> <p>1 extraordinary assumption, correct?</p> <p>2 A That would be a hypothetical condition.</p> <p>3 Q Okay. Let's just go through these</p> <p>4 assumptions you made.</p> <p>5 A Yes.</p> <p>6 Q You said -- I'm just looking at the</p> <p>7 middle -- there's no dispute with respect to</p> <p>8 title.</p> <p>9 Do you see that?</p> <p>10 A Yes.</p> <p>11 Q And you assume the work is authentic?</p> <p>12 A Yes.</p> <p>13 Q Okay. It says the work as the provenance</p> <p>14 described by the faction.</p> <p>15 Do you see that?</p> <p>16 A Yes.</p> <p>17 Q The work as good condition?</p> <p>18 A Yes.</p> <p>19 Q Okay. And the work has not been offered</p> <p>20 to the market, i.e., fresh to the market?</p> <p>21 A Yes.</p> <p>22 Q The sitter is properly identified as</p> <p>23 Ottaviano de Medici?</p> <p>24 A Yes, correct.</p> <p>25 Q Okay. And there's no literature</p> | <p style="text-align: right;">Page 135</p> <p>1 exhibition citation except what's indicate in the</p> <p>2 materials provided by the client?</p> <p>3 A Yes.</p> <p>4 Q And the work was unknown on the market</p> <p>5 prior to the Freedberg examination?</p> <p>6 A Yes.</p> <p>7 Q Okay. And you assumed all of these</p> <p>8 assumptions to be accurate for purposes of your</p> <p>9 report?</p> <p>10 A That's correct.</p> <p>11 Q Now, on page 7 of the report you said that</p> <p>12 you were unable to -- in the method of the</p> <p>13 research, okay, it mentions that, at the bottom,</p> <p>14 that you were limited in being able to go and</p> <p>15 visit certain works to the ongoing travel and</p> <p>16 health restrictions imposed by COVID-19.</p> <p>17 Do you see that?</p> <p>18 A Yes.</p> <p>19 Q Okay. In fact, the COVID-19 pandemic at</p> <p>20 that time was limiting a lot of people's travel,</p> <p>21 wasn't it?</p> <p>22 A It was, yes.</p> <p>23 Q All right. All right. Turning to page 9</p> <p>24 of your report.</p> <p>25 A Yes.</p> |
| <p style="text-align: right;">Page 136</p> <p>1 Q There is a -- well, just at the top,</p> <p>2 there's a -- it says, WAG, hash tag, I guess, and</p> <p>3 there's a number there.</p> <p>4 What is that number?</p> <p>5 A That's the appraisal number. Every</p> <p>6 appraisal is given a number at Winston.</p> <p>7 Q Okay. How does that work? There's a --</p> <p>8 the first number is that like the client and then</p> <p>9 the matter number or --</p> <p>10 A No, the appraisal number of this</p> <p>11 particular appraisal is 16089. That's the unique</p> <p>12 appraisal number. So I would -- that's how I</p> <p>13 would log it in my logbook. Whenever I refer to</p> <p>14 an appraisal, for security reasons, we don't use</p> <p>15 people's names. We don't say the del Sarto</p> <p>16 appraisal; we just use the number. So that's the</p> <p>17 easy way of doing it.</p> <p>18 The second number, I'm not sure what that</p> <p>19 number is actually, but the appraisal number for</p> <p>20 this appraisal is 16089.</p> <p>21 Q Okay. Now, the description of the</p> <p>22 painting, you describe it as a gentleman, possibly</p> <p>23 Ottaviano de Medici, correct?</p> <p>24 A That's correct.</p> <p>25 Q So you also acknowledge that the sitter in</p> | <p style="text-align: right;">Page 137</p> <p>1 the painting might not be Ottaviano de Medici?</p> <p>2 A Yes. I mean, it's one of the assumptions</p> <p>3 of the appraisal that it is, but even then I'm</p> <p>4 being ultra cautious and saying it's possibly him.</p> <p>5 Q Now, you state -- as to the authenticity,</p> <p>6 you say the definitive attribution to Andrea del</p> <p>7 Sarto was made by Sydney Freedberg.</p> <p>8 Do you see that?</p> <p>9 A Yes. I don't say that. I'm quoting from</p> <p>10 the documentation the client provided.</p> <p>11 Q Okay. And so the documentation that the</p> <p>12 client provided to you did you understand that to</p> <p>13 be written by a Virginia Bonito?</p> <p>14 A No, I didn't know that.</p> <p>15 Q If the condition report and the other</p> <p>16 documentation were written by the painting's</p> <p>17 owner, would that affect your reliance on that</p> <p>18 report?</p> <p>19 A If it was written by the owner, yes, I</p> <p>20 wouldn't give much credence to that, but I</p> <p>21 didn't -- I don't know that these were written by</p> <p>22 the owner.</p> <p>23 Q Okay. So if you learn that the condition</p> <p>24 report and the attribution, all that work was done</p> <p>25 by Bonito herself, that would impact your</p> |

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| <p style="text-align: right;">Page 138</p> <p>1 valuation, wouldn't it?</p> <p>2 MR. NIKAS: Objection to form.</p> <p>3 ARBITRATOR KRAMER: What's the nature of</p> <p>4 your objection?</p> <p>5 MR. NIKAS: The assumptions that he's</p> <p>6 asking the witness to make, the assumptions should</p> <p>7 be that the information was provided by the</p> <p>8 respondents was truthful, and that's what the</p> <p>9 claimants believed, and if that was not truthful,</p> <p>10 then his appraisal would have assumed the</p> <p>11 respondents were being truthful and were providing</p> <p>12 information about it and, therefore, shouldn't</p> <p>13 impact that opinion. He's asking about</p> <p>14 assumptions --</p> <p>15 MR. PRESS: This is -- I didn't ask him</p> <p>16 those questions.</p> <p>17 ARBITRATOR KRAMER: It's overruled. Go</p> <p>18 ahead.</p> <p>19 THE WITNESS: Okay. So Mr. Press, I</p> <p>20 gather you're asking me if an owner provides you</p> <p>21 with an authenticity document and a condition</p> <p>22 report, unless they were a qualified restorer,</p> <p>23 then, yes, it would be highly compromised.</p> <p>24 BY MR. PRESS:</p> <p>25 Q Now, let's turn to your comps.</p> | <p style="text-align: right;">Page 139</p> <p>1 A Yes.</p> <p>2 ARBITRATOR KRAMER: Turn to what?</p> <p>3 MR. PRESS: The comps, the comparables.</p> <p>4 BY MR. PRESS:</p> <p>5 Q That was on page 28?</p> <p>6 A Yes.</p> <p>7 Q Now -- so on -- you added in addition to</p> <p>8 the del Sarto sales and buy-ins that Geza had</p> <p>9 considered in the 2019 appraisal, you've added it</p> <p>10 looks like five additional paintings?</p> <p>11 A I did.</p> <p>12 Q Okay. And he didn't consider those</p> <p>13 paintings?</p> <p>14 A Not that I'm aware.</p> <p>15 Q Okay. Now, the Botticelli, as a painter,</p> <p>16 Botticelli is in a whole different league from the</p> <p>17 del Sarto; is that fair to say?</p> <p>18 A I wouldn't say that.</p> <p>19 Q No. Okay. And the painting, though, was</p> <p>20 in excellent condition, correct?</p> <p>21 A Yes. They were talking about the portrait</p> <p>22 of the young man with the rounder.</p> <p>23 Q Yes.</p> <p>24 A Yes, it was in very good condition</p> <p>25 considering its age.</p> |
| <p style="text-align: right;">Page 140</p> <p>1 Q And that was on wood, correct?</p> <p>2 A Correct.</p> <p>3 Q Okay. And it's fair to say wood is a more</p> <p>4 prized median for painting than canvas?</p> <p>5 A No, I don't agree with that, and I saw</p> <p>6 that in your brief. I don't know where this comes</p> <p>7 from, but you have to judge a work of art on its</p> <p>8 individual unique merits. Some are on panels,</p> <p>9 some are on canvas. It doesn't -- I mean, Titian</p> <p>10 hardly ever painted on panel, but you wouldn't say</p> <p>11 they worth less because they're on canvas or</p> <p>12 they're on panel. I mean, Titian doesn't paint on</p> <p>13 panel.</p> <p>14 Q Okay. All things being equal, sales on</p> <p>15 panels fetch higher prices than sales on canvas;</p> <p>16 isn't that fair to say?</p> <p>17 A No, I don't think that's fair to say.</p> <p>18 Q Okay. The Bronzino was another piece that</p> <p>19 was in excellent condition, correct?</p> <p>20 A No, it wasn't. I gave my testimony</p> <p>21 earlier, and I suspect that this picture was</p> <p>22 compromised in its condition. It had cracks in</p> <p>23 the panel. One crack went through the face, so I</p> <p>24 think that's one limiting conditions may meant</p> <p>25 that it didn't make more money than it might have</p> | <p style="text-align: right;">Page 141</p> <p>1 done.</p> <p>2 Q You placed the most emphasis in your</p> <p>3 comparables on the Fra Bartolomeo piece?</p> <p>4 A No. I said that the three most important</p> <p>5 ones were the Bronzino, the Fra Bartolomeo, and</p> <p>6 this del Sarto drawing.</p> <p>7 Q Okay. The Raphael piece at the bottom of</p> <p>8 page 28 --</p> <p>9 A Yes.</p> <p>10 Q -- a portrait of Lorenzo de Medici.</p> <p>11 A Yes.</p> <p>12 Q That was a piece that was relied on by</p> <p>13 Frances Anne Moore, correct?</p> <p>14 A Correct.</p> <p>15 Q And Geza dismissed that piece as a</p> <p>16 comparable, correct?</p> <p>17 A He didn't think it was relevant, no. It's</p> <p>18 on canvas, by the way, that picture.</p> <p>19 Q Now, the COVID-19 pandemic did have impact</p> <p>20 on artwork, didn't it?</p> <p>21 A Inevitably, yes. That had an impact on</p> <p>22 every aspect of life.</p> <p>23 Q Okay. If you turn to page 31 of your</p> <p>24 report.</p> <p>25 A Yes.</p> |

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| <p style="text-align: right;">Page 142</p> <p>1 Q You say, overall sale totals are</p> <p>2 dramatically down from the previous year.</p> <p>3 Do you see that? That's the first line of</p> <p>4 the market overview.</p> <p>5 A Yes. I'm not sure what date that specific</p> <p>6 date refers to because in 2021, the first auction</p> <p>7 houses to report this huge prices, huge sales, but</p> <p>8 yes, I think in the beginning of the -- in 2020,</p> <p>9 the sales totals were down, yes.</p> <p>10 Q Well, this report, if you look at the</p> <p>11 bottom, it was issued as of October of 2021?</p> <p>12 A 2021.</p> <p>13 Q 2021. And April 30, 2021, correct?</p> <p>14 A Yes.</p> <p>15 Q Okay. And you said dealer sales had been</p> <p>16 particularly badly hit mainly due to the closure</p> <p>17 of the world's art fairs.</p> <p>18 Do you see that?</p> <p>19 A Yes.</p> <p>20 Q And to the extended restrictions on world</p> <p>21 travel, therefore hit this market particularly</p> <p>22 hard.</p> <p>23 Do you see that?</p> <p>24 A Yes.</p> <p>25 Q And then in the -- you were speaking</p> | <p style="text-align: right;">Page 143</p> <p>1 before about the auction, the Sotheby's auction,</p> <p>2 in which the Botticelli sold for 92 million; do</p> <p>3 you recall that?</p> <p>4 A Yes.</p> <p>5 Q And I think it was sold by my ex-boss</p> <p>6 Sheldon Solder, I didn't know if you knew that?</p> <p>7 A Yes, I did actually.</p> <p>8 Q But that accounted for I think you said</p> <p>9 80 percent of the sales in that auction?</p> <p>10 A That's correct. The COVID-19 pandemic</p> <p>11 didn't effect the sell of that picture, but that</p> <p>12 was an exceptional picture in that sale, that's</p> <p>13 for sure.</p> <p>14 Q In fact, if you look at the numbers on</p> <p>15 page 31, I think 14 million sold in that auction</p> <p>16 aside from the Botticelli.</p> <p>17 A No, I think it was about 22 million. Take</p> <p>18 the Botticelli out, it's about 22 million.</p> <p>19 Q Yes, 22 million. Off by ten.</p> <p>20 In the next paragraph down it says, at</p> <p>21 Christie's London, in December 2020, the sale of</p> <p>22 47 lots, 86, although it's overall total of 22</p> <p>23 million pounds was balled down on previous years.</p> <p>24 Do you see that?</p> <p>25 A Yes.</p> |
| <p style="text-align: right;">Page 144</p> <p>1 Q And the fact is that in 2020 and 2021, the</p> <p>2 art market was still impacted by the pandemic,</p> <p>3 right?</p> <p>4 A Well, be careful because I think that was</p> <p>5 2020, but in 2021, as I recall, Sotheby's posted</p> <p>6 the highest turnover ever. I mean, so it did</p> <p>7 bounce back in 2021. So you necessarily, one has</p> <p>8 to look backwards when you're watching these</p> <p>9 generalizations on the market, so this would have</p> <p>10 been pertaining to the year 2020 and the beginning</p> <p>11 of 2021. I think 2021 overall was -- actually,</p> <p>12 the auction houses had quite a successful year.</p> <p>13 It's a bit counterintuitive, I know.</p> <p>14 Q Now, did you watch or attend the Sotheby's</p> <p>15 auction in which the painting sold in</p> <p>16 January 2022?</p> <p>17 A I did not, no.</p> <p>18 Q Did you watch it online?</p> <p>19 A I watched the January 2021 one when the</p> <p>20 Botticelli sold. I didn't watch the January 2022</p> <p>21 sale, no, I didn't.</p> <p>22 Q Okay. And I think when you testified</p> <p>23 before you said that 2.198 million figure was</p> <p>24 inclusive buyers premium?</p> <p>25 A Yes, that's correct.</p> | <p style="text-align: right;">Page 145</p> <p>1 Q And would it accord with your</p> <p>2 understanding that the hammer price of that sale</p> <p>3 was 1.8 million?</p> <p>4 A That sounds right to me, yes.</p> <p>5 Q Okay. Now, you're not aware of any</p> <p>6 changes in the painting between Geza's valuation</p> <p>7 of the painting in 2019 and your valuation in</p> <p>8 2021, are you?</p> <p>9 A I'm not aware of any. I haven't -- I've</p> <p>10 got no information on it, to be honest.</p> <p>11 Q Okay. And the art market itself was worse</p> <p>12 after 2019 than in 2019 itself; is that fair to</p> <p>13 say, the market for Old Master paintings?</p> <p>14 A In general, the totals were down in 2020</p> <p>15 because of COVID, yes.</p> <p>16 Q Now, you were asked some questions about</p> <p>17 whether a filed lawsuit could have impact on the</p> <p>18 market price that was attained in the Sotheby's</p> <p>19 auction, correct?</p> <p>20 A Correct.</p> <p>21 Q Okay. And counsel showed you a complaint</p> <p>22 filed three days before the auction; do you recall</p> <p>23 that?</p> <p>24 A Yes.</p> <p>25 Q And you don't have any knowledge</p> |

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| <p style="text-align: right;">Page 146</p> <p>1 concerning whether participants in the art market</p> <p>2 were even aware of that lawsuit, do you?</p> <p>3 A Well, Sotheby's were aware. They had to</p> <p>4 be aware.</p> <p>5 Q But you're not aware of whether any buyers</p> <p>6 or bidders in the market had any knowledge about</p> <p>7 that lawsuit, correct?</p> <p>8 A Well, from my experience at Christie's, if</p> <p>9 you knew that there was a lawsuit pending on a</p> <p>10 painting, you would be duty bound to inform anyone</p> <p>11 interested in that painting.</p> <p>12 Q The point here is, you don't have any</p> <p>13 personal knowledge of anybody who was aware of</p> <p>14 that lawsuit?</p> <p>15 A No, I don't.</p> <p>16 Q Now --</p> <p>17 ARBITRATOR KRAMER: How much more do you</p> <p>18 have?</p> <p>19 MR. PRESS: Maybe just a couple minutes.</p> <p>20 ARBITRATOR KRAMER: I'm getting hungry.</p> <p>21 MR. PRESS: Why don't we take a two-minute</p> <p>22 break. My client want to take to me for a second,</p> <p>23 and then I'll wrap up. It'll be no longer than a</p> <p>24 bathroom break.</p> <p>25 ARBITRATOR KRAMER: Take all the time you</p> | <p style="text-align: right;">Page 147</p> <p>1 want.</p> <p>2 MR. PRESS: Okay. That's very good.</p> <p>3 (Whereupon, a break was taken at</p> <p>4 1:15 p.m.)</p> <p>5 ARBITRATOR KRAMER: Back on the record.</p> <p>6 BY MR. PRESS:</p> <p>7 Q So Dr. Hunter, you said -- strike that.</p> <p>8 You've mentioned that Sotheby's published</p> <p>9 an essay by Linda Wolk Simon that -- it says a</p> <p>10 good essay concerning the painting, correct?</p> <p>11 A Yes.</p> <p>12 Q And that was a marketing effort by</p> <p>13 Sotheby's, correct?</p> <p>14 A Yes, it was.</p> <p>15 Q Okay. And you're not aware of what other</p> <p>16 marketing effort Sotheby's did in connection with</p> <p>17 the painting in 2021 and 2022, are you?</p> <p>18 A Correct, I don't know.</p> <p>19 Q You don't know either way?</p> <p>20 A Well, if it had come to London, I would</p> <p>21 have seen it. So I know they didn't send it to</p> <p>22 London. They didn't -- I do look out for</p> <p>23 forthcoming sales, information about sales, and it</p> <p>24 didn't come past my, you know, my attention, so I</p> <p>25 would say to that extent I wanted to, but, no, I</p> |
| <p style="text-align: right;">Page 148</p> <p>1 don't know what they did, if anything.</p> <p>2 Q In discussing the April 2020 Christie's</p> <p>3 sale, you mentioned a painting by Sebastiano del</p> <p>4 Piombo?</p> <p>5 A Yes, I did.</p> <p>6 Q Okay. And you said that was roughly</p> <p>7 comparable to the del Sarto?</p> <p>8 A Well, as an artist he's comparable, but,</p> <p>9 yes, he's a similarly important high renaissance</p> <p>10 artist.</p> <p>11 Q And that painting sold for around three</p> <p>12 million, right.</p> <p>13 A That's right.</p> <p>14 Q Okay. I think you testified that Virginia</p> <p>15 Bonito reached out to in or around 2015 when you</p> <p>16 were working at Falcon -- what was the name of</p> <p>17 your firm?</p> <p>18 A Falcon Fine Art.</p> <p>19 Q And did you remember the painting from</p> <p>20 when she reached out to you back then?</p> <p>21 A The answer is no because, you see, the</p> <p>22 initial contact with Professor Bonito was about a</p> <p>23 sculpture by San Sabino, and she made quite a big</p> <p>24 play on this, and I remember seeing an image of it</p> <p>25 and discussing it with her, but the part of the</p> | <p style="text-align: right;">Page 149</p> <p>1 criteria we used at Falcon Fine Art was you needed</p> <p>2 to at least two artworks to do financing. So I</p> <p>3 told her no matter how since the San Sabino is,</p> <p>4 you need another piece. Then she said, oh, I'll</p> <p>5 get back to you on that. There was a bit of</p> <p>6 to'ing and fro'ing, and then she came back to me</p> <p>7 and told me, I do remember, she said she's got a</p> <p>8 fantastic portrait by Andrea del Sarto. I said,</p> <p>9 well, that sounds interesting. But the moment she</p> <p>10 mentioned that it was jointly owned, or there was</p> <p>11 an ownership, a complicate ownership, we pulled</p> <p>12 the plug on it. So I never got to the point where</p> <p>13 we contemplated it, so I didn't go through a</p> <p>14 search, I didn't look at the picture, I didn't go</p> <p>15 see it. I mean, it never happened.</p> <p>16 So the answer is I had a fleeting</p> <p>17 awareness of a del Sarto that Bonito had, but I</p> <p>18 didn't really know much about it.</p> <p>19 Q And was it in connection with that</p> <p>20 approach by her that she provided you with an Anne</p> <p>21 Frances Moore appraisal?</p> <p>22 A Well, I can't remember, it's possible.</p> <p>23 It's possible, but I can't remember. It's a long</p> <p>24 time ago, and I don't remember. It didn't really</p> <p>25 come up again.</p> |

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| <p style="text-align: right;">Page 150</p> <p>1 Q Okay. And your testimony is that it</p> <p>2 didn't -- well, it occurred to you in 2019 to be</p> <p>3 careful of a painting that was associated with</p> <p>4 Virginia Bonito, but it didn't occur to you in</p> <p>5 2021 to be careful of a painting that had been</p> <p>6 associated with Virginia Bonito?</p> <p>7 MR. NIKAS: Objection. There's no</p> <p>8 foundation that he know it was from Bonito in</p> <p>9 2021.</p> <p>10 ARBITRATOR KRAMER: He can answer that</p> <p>11 question first.</p> <p>12 In 2021, did you understand that the</p> <p>13 painting that you were appraising had some</p> <p>14 relationship to Virginia Bonito.</p> <p>15 THE WITNESS: No, because I was asked to</p> <p>16 assume that there was no title issue, and Bonito's</p> <p>17 name didn't come up in the -- see, Bonito's name</p> <p>18 would have raised -- would have immediately come</p> <p>19 up with Winston, so when they did the check, it</p> <p>20 didn't feature.</p> <p>21 BY MR. PRESS:</p> <p>22 Q But you're testifying that you didn't --</p> <p>23 although two years earlier, it gave you pause that</p> <p>24 Bonito was associated with the painting. You're</p> <p>25 saying two years later, same painting, you had no</p> | <p style="text-align: right;">Page 151</p> <p>1 recollection of it?</p> <p>2 A The name Bonito rang the bell with me when</p> <p>3 I was talking to Geza about it. The painting -- I</p> <p>4 didn't remember the painting, no.</p> <p>5 In connection -- when I was given this</p> <p>6 assignment that didn't -- it didn't ring those</p> <p>7 bells.</p> <p>8 If Bonito's name had appeared --</p> <p>9 ARBITRATOR KRAMER: I think you've</p> <p>10 answered the question.</p> <p>11 BY MR. PRESS:</p> <p>12 Q When you received the assignment in 2021</p> <p>13 to do the appraisal, did that come to you</p> <p>14 directly, or did that come through Winston and get</p> <p>15 sort of farmed out to you?</p> <p>16 A Oh, it definitely comes through Winston.</p> <p>17 Q Okay. And did that come through Elizabeth</p> <p>18 von Habsburg?</p> <p>19 A Ordinarily, it wouldn't come from</p> <p>20 Elizabeth. It would come from one of the more</p> <p>21 junior people, but on this occasion, I do remember</p> <p>22 Elizabeth being involved here. Yes, I think it</p> <p>23 came to me directly from Elizabeth, yes.</p> <p>24 Q Okay. All right. Thank you, Dr. Hunter.</p> <p>25 I appreciate your time. I have no further</p> |
| <p style="text-align: right;">Page 152</p> <p>1 questions.</p> <p>2 ARBITRATOR KRAMER: Anything before we</p> <p>3 break for lunch.</p> <p>4 MR. PRESS: I have some minimal redirect.</p> <p>5 It'll be ten minutes.</p> <p>6 ARBITRATOR KRAMER: I have a question.</p> <p>7 Now, that you've the 2019 appraisal by a</p> <p>8 colleague that you respect, Mr. Von Habsburg, and</p> <p>9 it appears, to me anyway, that some of your</p> <p>10 extraordinary assumptions in your 2021 appraisal</p> <p>11 are not justified. You were asked if they were in</p> <p>12 good condition, would you today having seen the</p> <p>13 2019 appraisal and the condition report, would</p> <p>14 that cause you to a change your appraisal?</p> <p>15 THE WITNESS: Well, the things that have</p> <p>16 changed, clearly the title issue, the ownership</p> <p>17 issue is a problem, and condition seems to be more</p> <p>18 complicated than I was assuming, I was asked to</p> <p>19 assume. So those two factors, yes, they would</p> <p>20 have an impact on the price. I think I would,</p> <p>21 therefore, have -- well, not certainly be as low</p> <p>22 as \$1.5 million, but I would have tempered the</p> <p>23 valuations, yes.</p> <p>24 MR. NIKAS: May start, sir?</p> <p>25 ARBITRATOR KRAMER: Go ahead.</p> | <p style="text-align: right;">Page 153</p> <p>1 R E D I R E C T - E X A M I N A T I O N</p> <p>2 BY MR. NIKAS:</p> <p>3 Q Now, we talked about assumptions Mr. Press</p> <p>4 asked you about and then Mr. Kramer did too. I</p> <p>5 want you to assume -- well, Mr. Press asked you</p> <p>6 whether fair market value changes in a litigation.</p> <p>7 Now, Mr. von Habsburg, when he prepared</p> <p>8 that report, was he providing it in the context of</p> <p>9 a litigation?</p> <p>10 A No.</p> <p>11 Q Okay. Were you?</p> <p>12 A Yes.</p> <p>13 Q Now, I want you to assume that the legal</p> <p>14 rule that governs this litigation is that</p> <p>15 Mr. Kramer is required to put the claimants in the</p> <p>16 position they would have been in if the</p> <p>17 respondents performed their contract, that is, the</p> <p>18 authenticity, the representations were truthful,</p> <p>19 the sitter representations were truthful, the</p> <p>20 condition report that they provided to the</p> <p>21 claimants were truthful, and the other information</p> <p>22 that they provided about the sale expectations</p> <p>23 were truthful. I want you to assume that.</p> <p>24 A Yes.</p> <p>25 Q I also want you to assume that the</p> |

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| <p style="text-align: right;">Page 154</p> <p>1 respondents in the litigation are not allowed to</p> <p>2 take advantage of the fact that their conduct</p> <p>3 prevented you from accessing a painting.</p> <p>4 Would those assumptions and rules, which</p> <p>5 govern a litigation, impact the fair market value</p> <p>6 of a particular work of art, which you can ask or</p> <p>7 repeat --</p> <p>8 MR. PRESS: I'm going to object. This is</p> <p>9 argumentative.</p> <p>10 ARBITRATOR KRAMER: You may be right.</p> <p>11 Let's get an answer.</p> <p>12 MR. PRESS: Okay.</p> <p>13 MR. NIKAS: If I may, sir, the assumptions</p> <p>14 are ones that he's challenged.</p> <p>15 ARBITRATOR KRAMER: I understand. Let's</p> <p>16 get an answer.</p> <p>17 THE WITNESS: So I'm not entirely clear</p> <p>18 what the question is, sorry.</p> <p>19 BY MR. NIKAS:</p> <p>20 Q Sure. So I've asked you to assume that</p> <p>21 you're in a litigation as opposed to a non</p> <p>22 litigation --</p> <p>23 A Yes.</p> <p>24 Q -- like Mr. von Habsburg?</p> <p>25 A Yes.</p> | <p style="text-align: right;">Page 155</p> <p>1 Q Now, in a litigation I want you to assume</p> <p>2 that there are legal rules that apply.</p> <p>3 A Yes.</p> <p>4 Q And I want you to assume that one of those</p> <p>5 legal rules is that the arbitrator is required to</p> <p>6 assume that when respondents make contractual</p> <p>7 promises like a work is authentic, the sitter is</p> <p>8 correct, the condition report provided in</p> <p>9 connection with the settlement is accurate,</p> <p>10 whether those type of assumptions can change the</p> <p>11 fair market value of a work for purposes of</p> <p>12 litigation?</p> <p>13 MR. PRESS: Same objection.</p> <p>14 ARBITRATOR KRAMER: Overruled.</p> <p>15 THE WITNESS: Yes. They underpinned my</p> <p>16 valuation for 15 million.</p> <p>17 BY MR. NIKAS:</p> <p>18 Q Do you have any reason to think that</p> <p>19 Mr. von Habsburg was operating on any of those</p> <p>20 assumptions for litigation?</p> <p>21 A Well, quite contrary. He was acting in a</p> <p>22 totally different capacity with different</p> <p>23 assumptions and it's a different purpose.</p> <p>24 Q Now, Mr. Press, noted that</p> <p>25 Mr. von Habsburg's report identified certain</p> |
| <p style="text-align: right;">Page 156</p> <p>1 comparables; do you recall that?</p> <p>2 A Yes.</p> <p>3 Q Do you recall that Mr. Von Habsburg had</p> <p>4 not included a handful of comparables that you</p> <p>5 have described as very important to value?</p> <p>6 A I saw that, yes.</p> <p>7 Q Do you believe that his report was</p> <p>8 mistaken, deficient by excluding comparables that</p> <p>9 you believe to be important?</p> <p>10 A Well, I hesitate to criticize Geza's</p> <p>11 report. I mean, he used the comparables that he</p> <p>12 thought were relevant; I used the comparables that</p> <p>13 I believed were relevant. I happened to do a few</p> <p>14 more comparables than he did. Maybe I'm slightly</p> <p>15 more familiar with this market than he is, I don't</p> <p>16 know.</p> <p>17 Q Do you believe that your comparables are</p> <p>18 appropriate for inclusion in your report?</p> <p>19 A I certainly do, and I went to explaining</p> <p>20 why I thought they were.</p> <p>21 Q Now, Mr. Press read a section of the</p> <p>22 market description in your report; do you recall</p> <p>23 that?</p> <p>24 A Yes, I do.</p> <p>25 Q You read the first paragraph that said</p> | <p style="text-align: right;">Page 157</p> <p>1 that the sales are down; do you recall that?</p> <p>2 A Yes, I do.</p> <p>3 Q And the second paragraph talked about how</p> <p>4 auction sales had a slightly different story; do</p> <p>5 you recall your language there?</p> <p>6 A Yes, I do.</p> <p>7 Q Now, did your \$15 million appraisal</p> <p>8 account for the state of the market as you</p> <p>9 described it in your report?</p> <p>10 A Yes, definitely, yes.</p> <p>11 Q Now, Mr. Press, referenced one artist from</p> <p>12 the Christie's sale who you said was a comparable</p> <p>13 artist to del Sarto; do you recall that?</p> <p>14 A Correct.</p> <p>15 Q Now, I heard you testify that the work was</p> <p>16 not comparable to the del Sarto here.</p> <p>17 Could you tell us why not?</p> <p>18 A Could we get the work up on the --</p> <p>19 Q Sure.</p> <p>20 A I think it was in the respondents</p> <p>21 exhibits. We're looking at the April sale, aren't</p> <p>22 we. There are no images on those, sadly.</p> <p>23 Q There isn't?</p> <p>24 A I make a Tab 3 in the respondent's</p> <p>25 exhibit. There is the Christie's sale, but there</p> |

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| <p style="text-align: right;">Page 158</p> <p>1 are no images sadly.</p> <p>2 Q If you could just take a look at Tab 3 to</p> <p>3 find the work?</p> <p>4 A The del Piombo is lot 23. A religious</p> <p>5 work, also on canvas. It's hard to explain when</p> <p>6 you can't see an image of it. I mean, I don't</p> <p>7 recall this picture particularly, but Sebastiano,</p> <p>8 del Piombo isn't exactly contemporary of del</p> <p>9 Sarto's. It's a rival of Raphael's most</p> <p>10 successful, but a rival nonetheless. He was</p> <p>11 working in Rome largely and, you know, he had a</p> <p>12 comparable artist, and this is another high</p> <p>13 Renaissance artist. I don't regard this religious</p> <p>14 work as comparable to very, very rare portrait by</p> <p>15 del Sarto that we're discussing. It's not same</p> <p>16 league, but it's a significant work. It made \$3.1</p> <p>17 million in a Christie's sale.</p> <p>18 Q In connection with the report that you</p> <p>19 prepared, did you look at the results from the</p> <p>20 Christie's April 2021 sale?</p> <p>21 A Well, in as much as I was asked to give an</p> <p>22 appraisal of the April date, yes, I looked at the</p> <p>23 sales of that date, yes.</p> <p>24 Q When you looked at those lots, did you</p> <p>25 determine that any of them had comparable works to</p> | <p style="text-align: right;">Page 159</p> <p>1 the del Sarto at issue here?</p> <p>2 A In this sale at Christie's?</p> <p>3 Q Yes, correct.</p> <p>4 A There was nothing as good as the del</p> <p>5 Sarto. It would have been the star lot in that</p> <p>6 sale.</p> <p>7 MR. NIKAS: I have no further questions.</p> <p>8 MR. PRESS: One question.</p> <p>9 R E C R O S S - E X A M I N A T I O N</p> <p>10 BY MR. PRESS:</p> <p>11 Q Dr. Hunter, do you know whether Sotheby's</p> <p>12 or another auction house guaranteed the</p> <p>13 authenticity entitled of the work as part of the</p> <p>14 sale?</p> <p>15 A Well, they -- my understanding is that</p> <p>16 they don't guarantee authenticity, but if you buy</p> <p>17 a work from a Christie's or Sotheby's auction, and</p> <p>18 within five years it turns out to be not as they</p> <p>19 described it, not by the artist, then -- and you</p> <p>20 can prove that, then they will refund you your</p> <p>21 money. So they warrant it to that extent, but I</p> <p>22 don't think they give an unlimited warranty that</p> <p>23 their works are a hundred percent accurate, no.</p> <p>24 Q Okay. But when they sell a painting, they</p> <p>25 warrant, to the extent you described, authenticity</p> |
| <p style="text-align: right;">Page 160</p> <p>1 in title, correct?</p> <p>2 A I think that for a limited period, I think</p> <p>3 they do, yes.</p> <p>4 MR. PRESS: Okay. No further questions.</p> <p>5 Thank you.</p> <p>6 ARBITRATOR KRAMER: Is there a claim that</p> <p>7 the assumption, the extraordinary assumption, that</p> <p>8 Dr. Hunter made that the painting was authentic is</p> <p>9 inaccurate?</p> <p>10 MR. PRESS: Yes.</p> <p>11 ARBITRATOR KRAMER: Notwithstanding the</p> <p>12 representation in the settlement agreements, but</p> <p>13 needs to be briefed.</p> <p>14 MR. PRESS: I'm happy to explain it.</p> <p>15 ARBITRATOR KRAMER: We'll have that in the</p> <p>16 brief.</p> <p>17 MR. PRESS: Okay.</p> <p>18 ARBITRATOR KRAMER: Let's have lunch.</p> <p>19 (Whereupon, a break was taken at</p> <p>20 1:35 p.m.)</p> <p>21 ARBITRATOR KRAMER: Back on the record at</p> <p>22 2:20 p.m.</p> <p>23 Would you swear in the witness, please.</p> <p>24 G A R Y G R E E N B E R G, called as a witness,</p> <p>25 having been duly sworn by a Notary Public, was</p> | <p style="text-align: right;">Page 161</p> <p>1 questioned and testified as follows:</p> <p>2 D I R E C T - E X A M I N A T I O N</p> <p>3 BY MR. NIKAS:</p> <p>4 Q Would you, please, tell us your name.</p> <p>5 A Gary Greenberg.</p> <p>6 Q Mr. Greenberg, are you a claimant in this</p> <p>7 case?</p> <p>8 A I am, yes.</p> <p>9 Q Now, leading up to the settlement of your</p> <p>10 initial dispute with Ian Peck and the respondents,</p> <p>11 did he propose using the Andrea del Sarto work</p> <p>12 that we've been talking about today in</p> <p>13 consideration for the settlement?</p> <p>14 A Yes.</p> <p>15 Q Did Mr. Peck tell you that the work was</p> <p>16 authentic?</p> <p>17 A Yes.</p> <p>18 Q Did you Mr. Peck tell you that the work</p> <p>19 was in good condition?</p> <p>20 A Yes.</p> <p>21 Q Did you ask Mr. Peck for documents</p> <p>22 reflecting diligence that had been done on the</p> <p>23 work?</p> <p>24 A Yes.</p> <p>25 Q Did he you provide you documents?</p> |

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| <p style="text-align: right;">Page 162</p> <p>1 A Yes.</p> <p>2 Q Go to Exhibit 17, Tab 17 in the premarked</p> <p>3 exhibit list, please. That's the report of</p> <p>4 Dr. Hunter.</p> <p>5 ARBITRATOR KRAMER: You're looking at</p> <p>6 Dr. Hunter's report?</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MR. NIKAS:</p> <p>9 Q If you would, please, turn to page 13 of</p> <p>10 Dr. Hunter's report. There's an Appendix A that</p> <p>11 says information provided by clients; do you see</p> <p>12 that?</p> <p>13 A Yes.</p> <p>14 Q Are you the client referenced here?</p> <p>15 A Yes.</p> <p>16 Q Now, this appendix has, if you will turn</p> <p>17 to page 14, a fact sheet; do you see that?</p> <p>18 A I see it, yes.</p> <p>19 Q The fact sheet says, under authentication,</p> <p>20 the definitive Andrea del Sarto was made by Sydney</p> <p>21 Freedberg?</p> <p>22 A Yes.</p> <p>23 MR. PRESS: Can we have this in a less</p> <p>24 leading way? This is direct-examination.</p> <p>25 ARBITRATOR KRAMER: These are great</p> | <p style="text-align: right;">Page 163</p> <p>1 background questions. It's not really leading.</p> <p>2 Leading typically doesn't wear on the jury.</p> <p>3 MR. PRESS: Okay.</p> <p>4 BY MR. NIKAS:</p> <p>5 Q Under the authentication section it says,</p> <p>6 both the attributions that Andrea del Sarto an the</p> <p>7 data have been universally accepted by those</p> <p>8 experts in the arena of Italian renaissance</p> <p>9 artwork.</p> <p>10 Do you see that language?</p> <p>11 A Yes.</p> <p>12 Q Where did this document come from?</p> <p>13 A Ian Peck.</p> <p>14 ARBITRATOR KRAMER: How did you get it?</p> <p>15 THE WITNESS: By e-mail.</p> <p>16 BY MR. NIKAS:</p> <p>17 Q Did -- was this in response to your</p> <p>18 request for the diligence documents?</p> <p>19 A Yes.</p> <p>20 Q The next page --</p> <p>21 ARBITRATOR KRAMER: Was it redacted when</p> <p>22 you got it?</p> <p>23 THE WITNESS: Yes, sir.</p> <p>24 ARBITRATOR KRAMER: Okay.</p> <p>25 BY MR. NIKAS:</p> |
| <p style="text-align: right;">Page 164</p> <p>1 Q We can stick to this page for a minute.</p> <p>2 The authentication sections says the painting has</p> <p>3 never been offered on the art market; do you see</p> <p>4 that?</p> <p>5 A Yes.</p> <p>6 Q Now, when you read this fact sheet did you</p> <p>7 believe it to be true?</p> <p>8 A Yes.</p> <p>9 Q Mr. Peck tell you the documents he was</p> <p>10 providing were --</p> <p>11 ARBITRATOR KRAMER: Why don't you ask him</p> <p>12 what Mr. Peck told him.</p> <p>13 MR. NIKAS: Sure.</p> <p>14 BY MR. NIKAS:</p> <p>15 Q What did Mr. Peck tell you about the</p> <p>16 documents he was providing to you?</p> <p>17 A Mr. Peck told me that the documentation I</p> <p>18 call due diligence, he represented that the due</p> <p>19 diligence was true.</p> <p>20 Q Now, if you'll turn to page 18 and page 19</p> <p>21 of Dr. Hunter's report, this is a two-page letter</p> <p>22 with S. J. Freedberg on the top; do you see that?</p> <p>23 A Yes.</p> <p>24 Q Did Mr. Peck provide you with this</p> <p>25 information as well?</p> | <p style="text-align: right;">Page 165</p> <p>1 A Yes, he did.</p> <p>2 Q Did he tell you why he was giving you a</p> <p>3 letter by Sydney Freedberg?</p> <p>4 A Yes.</p> <p>5 ARBITRATOR KRAMER: What did you tell you?</p> <p>6 THE WITNESS: Sydney Freedberg is one of</p> <p>7 the experts in connection with Andrea del Sarto.</p> <p>8 BY MR. NIKAS:</p> <p>9 Q Did Mr. Peck say anything else about the</p> <p>10 Freedberg letter?</p> <p>11 A Mr. Peck indicated that it was of high</p> <p>12 importance.</p> <p>13 Q Now, on the Document 4 introductory</p> <p>14 remarks, there's a number of references to</p> <p>15 Ottaviano de Medici?</p> <p>16 ARBITRATOR KRAMER: What page are you on?</p> <p>17 MR. NIKAS: This is 16 and 17.</p> <p>18 BY MR. NIKAS:</p> <p>19 Q It says, for example, the stately demeanor</p> <p>20 of Ottaviano in our portrait elegantly consumed in</p> <p>21 a rich, but unadorned an silk jacket and fine wool</p> <p>22 mantel, et cetera.</p> <p>23 Do you see the reference to Ottaviano de</p> <p>24 Medici?</p> <p>25 A Yes. It's in the remarks section of the</p> |

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| <p style="text-align: right;">Page 166</p> <p>1 diligence.</p> <p>2 Q Now, did Mr. Peck tell you why he was</p> <p>3 providing a document describing Ottaviano de'</p> <p>4 Medici?</p> <p>5 A Yes, the significance of the sitter was of</p> <p>6 high importance.</p> <p>7 Q Did he tell you why, or no?</p> <p>8 A The subject of a portrait is of high</p> <p>9 importance. I don't know if he specifically told</p> <p>10 me that exactly, but I know that a sitter of a</p> <p>11 portrait is of high importance.</p> <p>12 Q And did Mr. Peck tell you who the sitter</p> <p>13 was in this portrait?</p> <p>14 A Yes.</p> <p>15 Q And what did he tell you?</p> <p>16 A He told me that he believed that it was</p> <p>17 Ottaviano de' Medici.</p> <p>18 ARBITRATOR KRAMER: Who prepared the</p> <p>19 introductory remarks? Was that something</p> <p>20 Dr. Hunter prepared or was that something that was</p> <p>21 given to you by Mr. Peck, or someone else?</p> <p>22 THE WITNESS: It was something that was</p> <p>23 given to me by e-mail from Mr. Peck.</p> <p>24 ARBITRATOR KRAMER: And you sent it on to</p> <p>25 Dr. Hunter?</p> | <p style="text-align: right;">Page 167</p> <p>1 THE WITNESS: All the diligence I had, I</p> <p>2 provided to my counsel.</p> <p>3 ARBITRATOR KRAMER: Okay. But this page</p> <p>4 that we're looking at was provided to you by -- in</p> <p>5 an e-mail from Mr. Peck; is that correct?</p> <p>6 THE WITNESS: That is correct, yes.</p> <p>7 BY MR. NIKAS:</p> <p>8 Q And let me just clarify, that Appendix A</p> <p>9 is information provided by clients.</p> <p>10 Is this entire appendix information</p> <p>11 provided to you by Ian Peck?</p> <p>12 You can look through it.</p> <p>13 A Yes, give me a minute. Everything all the</p> <p>14 way through page 23 from page 14, which you</p> <p>15 identified as Appendix A was provided to me by</p> <p>16 Mr. Peck via e-mail.</p> <p>17 Q There's a Wikipedia entry, it looks like</p> <p>18 it's referring to David Franklin. That completes</p> <p>19 Appendix A, a few pages.</p> <p>20 Do you know what that is?</p> <p>21 A I believe that in my research I was</p> <p>22 looking for any other experts, and I found this on</p> <p>23 the web myself.</p> <p>24 Q So you've told us about the summary of</p> <p>25 fact sheet that you received from Mr. Peck, the</p> |
| <p style="text-align: right;">Page 168</p> <p>1 introductory of remarks you received from</p> <p>2 Mr. Peck, the Freedberg letter from Mr. Peck, now</p> <p>3 we're on page 20 and 21. It has two photographs.</p> <p>4 Did Mr. Peck tell you what these</p> <p>5 photographs were of and why he was providing them?</p> <p>6 A He told me that these photographs, which</p> <p>7 are in paper, but I received on the Internet, so</p> <p>8 they were digital, they were two versions of the</p> <p>9 same thing. They were this -- both of them were</p> <p>10 the sitter, the portrait of the sitter, one was</p> <p>11 the clean state, which is the one on page 21. The</p> <p>12 clean state, as Dr. Hunter had described, is where</p> <p>13 the strip off the seal and the varnish and any</p> <p>14 restoration. And page 20 was the digital image</p> <p>15 that I received of the state before they stripped</p> <p>16 off the varnish, if it were varnish. I don't know</p> <p>17 what it was that they covered it with, but...</p> <p>18 restart state, I guess, would be the best way to</p> <p>19 describe it.</p> <p>20 Q So were you told that the work was</p> <p>21 restored?</p> <p>22 A Yes.</p> <p>23 Q Were you told by Mr. Peck the outcome of</p> <p>24 that restoration?</p> <p>25 A No. I think it's mentioned in the</p> | <p style="text-align: right;">Page 169</p> <p>1 condition report that's in these documents.</p> <p>2 Q Now, if we go to page 23.</p> <p>3 ARBITRATOR KRAMER: Tell me which?</p> <p>4 MR. NIKAS: 23.</p> <p>5 BY MR. NIKAS:</p> <p>6 Q It's the condition report regard that</p> <p>7 Dr. Hunter testified about.</p> <p>8 ARBITRATOR KRAMER: I remember that.</p> <p>9 BY MR. NIKAS:</p> <p>10 Q Did Mr. Peck send you this document?</p> <p>11 A Yes, he did.</p> <p>12 Q Did he send it to you with the redactions</p> <p>13 reflected on this page?</p> <p>14 A Yes, he did.</p> <p>15 Q Now, this refers to the Andrea del Sarto.</p> <p>16 It says, the painting is in fine and stable</p> <p>17 condition. It has undergone restoration over the</p> <p>18 past year, and then refers to the restoration</p> <p>19 having been successful.</p> <p>20 Did you read this condition report in</p> <p>21 advance of settling the case with Mr. Peck and the</p> <p>22 respondents?</p> <p>23 A Yes.</p> <p>24 Q Did it lead you to form a view about the</p> <p>25 condition of the work?</p> |

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| <p style="text-align: right;">Page 170</p> <p>1 A It was of high importance to me.</p> <p>2 Q And how so?</p> <p>3 A If you're settling for anything of value,</p> <p>4 you want to know what the condition is. Having a</p> <p>5 condition report is of very high importance in my</p> <p>6 view.</p> <p>7 Q And did you have any reason to doubt that</p> <p>8 this condition report was accurate?</p> <p>9 A No.</p> <p>10 Q Did you believe that Mr. Peck was being</p> <p>11 deceptive when he provided this report to you?</p> <p>12 A No.</p> <p>13 Q Did you believe it was truthful?</p> <p>14 A I did, yes.</p> <p>15 Q And did Mr. Peck tell you, consistent with</p> <p>16 this report, that the condition of the work was</p> <p>17 good?</p> <p>18 A Yes.</p> <p>19 ARBITRATOR KRAMER: I want to move on.</p> <p>20 What is the photo on page 22?</p> <p>21 THE WITNESS: This is a comparable.</p> <p>22 ARBITRATOR KRAMER: And who sent that to</p> <p>23 you?</p> <p>24 THE WITNESS: Mr. Peck.</p> <p>25 ARBITRATOR KRAMER: Did Mr. Peck send that</p> | <p style="text-align: right;">Page 171</p> <p>1 to you?</p> <p>2 THE WITNESS: Yes.</p> <p>3 ARBITRATOR KRAMER: Do you know who the</p> <p>4 comparable was by?</p> <p>5 THE WITNESS: I apologize.</p> <p>6 ARBITRATOR KRAMER: Don't apologize.</p> <p>7 THE WITNESS: I don't remember right now.</p> <p>8 ARBITRATOR KRAMER: That's okay.</p> <p>9 THE WITNESS: I can think about it if you</p> <p>10 want me to.</p> <p>11 ARBITRATOR KRAMER: That's okay.</p> <p>12 BY MR. NIKAS:</p> <p>13 Q Now, speaking of comparables, did Mr. Peck</p> <p>14 tell you whether he had an idea of how much the</p> <p>15 work was worth?</p> <p>16 A Yes.</p> <p>17 Q And what did he tell you?</p> <p>18 A He told me that it could -- there's a</p> <p>19 range of values. It could possibly go as high as</p> <p>20 20, \$25 million.</p> <p>21 Q Did he give you a lower range than that?</p> <p>22 A Yes.</p> <p>23 Q And what did he talk about?</p> <p>24 A It could be lower. I think he was saying</p> <p>25 five, six million, something like that.</p> |
| <p style="text-align: right;">Page 172</p> <p>1 Q Okay. So as low as five or six, as high</p> <p>2 as 25; is that accurate?</p> <p>3 A Yes, uh-huh.</p> <p>4 Q Now, in addition to this condition report</p> <p>5 the summary fact sheet on page 14 said that Sydney</p> <p>6 Freedberg examined the painting in person, and he</p> <p>7 had concluded that it is a portrait of very high</p> <p>8 quality and an unusually handsome subject; do you</p> <p>9 see that?</p> <p>10 MR. PRESS: Once again, this is getting to</p> <p>11 be very leading testimony. It's basically</p> <p>12 Mr. Nikas testifying. Can we do it some other</p> <p>13 way?</p> <p>14 ARBITRATOR KRAMER: What's the question?</p> <p>15 Answer the question.</p> <p>16 Objection overruled.</p> <p>17 THE WITNESS: I'm sorry. Please restate</p> <p>18 the question.</p> <p>19 BY MR. NIKAS:</p> <p>20 Q Sure. This summary of fact sheet says, in</p> <p>21 his letter -- well, it says Mr. Freedberg examined</p> <p>22 the painting in person, and says he further notes</p> <p>23 it's a portrait of very high quality of an usually</p> <p>24 handsome subject.</p> <p>25 Do you see that language?</p> | <p style="text-align: right;">Page 173</p> <p>1 A Yes.</p> <p>2 Q Did you read that language before settling</p> <p>3 this case?</p> <p>4 A Yes.</p> <p>5 Q Did that language have any impact</p> <p>6 whatsoever on your view of the del Sarto?</p> <p>7 A Yes. Sydney Freedberg is -- he's a</p> <p>8 professor at Harvard University and a curator at</p> <p>9 National Gallery of Art in Washington, D.C., a</p> <p>10 very qualified expert.</p> <p>11 Q Now, after you received what you've called</p> <p>12 this diligence from Ian Peck, did you enter into a</p> <p>13 settlement agreement to resolve your initial</p> <p>14 dispute with Mr. Peck and the respondents?</p> <p>15 A Yes.</p> <p>16 Q Return to Tab 1, please.</p> <p>17 A Okay.</p> <p>18 Q Would you tell us what this document is?</p> <p>19 A This is an execution copy of a settlement</p> <p>20 agreement signed by myself and Ian Peck on behalf</p> <p>21 of the entities that are in the recital section,</p> <p>22 and myself personally and Ian Peck personally,</p> <p>23 known as the parties to the agreement.</p> <p>24 Q Okay. And this settlement agreement has a</p> <p>25 number of provisions that govern the resolution of</p> |

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| <p style="text-align: right;">Page 174</p> <p>1 that matter?</p> <p>2 A Yes.</p> <p>3 Q Now, on page 2, Section 1-A-2, the</p> <p>4 provision says, GB has the right to terminate this</p> <p>5 agreement in its sole discretion if auctioneer</p> <p>6 provides a low-end estimate for the work that is</p> <p>7 less than \$4 million unless the auctioneer obtains</p> <p>8 a minimum guarantee for the work equal to or</p> <p>9 greater than \$4 million.</p> <p>10 Do you see that provision?</p> <p>11 A Yes, I see it.</p> <p>12 Q Did Mr. Peck agree to that provision as</p> <p>13 part of the settlement?</p> <p>14 A Yes, he did.</p> <p>15 Q Why is there a \$4 million provision saying</p> <p>16 you're allowed to terminate the agreements if the</p> <p>17 work comes in at less than \$4 million on an</p> <p>18 estimate?</p> <p>19 A Sure. The reasons, but first, GB, in this</p> <p>20 agreement, it represents my entities and myself,</p> <p>21 so that's GB. GB has the right to terminate this</p> <p>22 agreement. Why? What are the reasons? Several</p> <p>23 reasons. I believe that Mr. Peck owed GB a lot</p> <p>24 more than \$4 million. I was willing to accept an</p> <p>25 estimate of a minimum of \$4 million from an</p> | <p style="text-align: right;">Page 175</p> <p>1 auctioneer, and I didn't want to end up after the</p> <p>2 settlement agreement with a work of art that was</p> <p>3 worth less than the estimate by the auctioneer for</p> <p>4 a million dollars. Why? Well, because I was</p> <p>5 weighing whether the debt that I believe that</p> <p>6 Mr. Peck owed me, and the claims that I had</p> <p>7 against Mr. Peck for breach and fraud, if I didn't</p> <p>8 get a minimum of pennies on a dollar as I was</p> <p>9 looking at it, then I would just sue him.</p> <p>10 Q Did Christie's or a comparable auction</p> <p>11 house ever provide an estimate for this work?</p> <p>12 A No.</p> <p>13 Q Why not?</p> <p>14 A The work was never delivered to</p> <p>15 Christie's, nor any auctioneer that I'm aware of.</p> <p>16 Q Now, the why is already the subject of</p> <p>17 Mr. Kramer's summary judgment decision that they</p> <p>18 were breached. I won't get into that.</p> <p>19 ARBITRATOR KRAMER: Good.</p> <p>20 BY MR. NIKAS:</p> <p>21 Q So I will move on. In Section 1-A-3 it</p> <p>22 says at ACG election, ACG shall have the right to</p> <p>23 pay GB the sum of \$3.6 million at any time within</p> <p>24 60 days of the execution of this agreement, or the</p> <p>25 day before the auction or sale of the work under</p> |
| <p style="text-align: right;">Page 176</p> <p>1 paragraph 1A or some days later, as long as the</p> <p>2 date occurs before the day of the auction -- the</p> <p>3 advance payment.</p> <p>4 Do you see that language?</p> <p>5 A Yes, I do.</p> <p>6 Q Was the discounted accelerated payment</p> <p>7 that Mr. Peck agreed to make in this paragraph at</p> <p>8 his discretion, was that ever paid to you?</p> <p>9 A No, it was not paid.</p> <p>10 Q Now, Section 1C has a number of different</p> <p>11 tiers, which I'll call the "waterfall" reflecting</p> <p>12 how the sales proceeds were paid.</p> <p>13 Who came up with this formula in Section</p> <p>14 1C?</p> <p>15 A I believe it was initially proposed by</p> <p>16 Mr. Peck and then negotiated. So I would say as</p> <p>17 it shows up in this agreement that it was a</p> <p>18 negotiated waterfall.</p> <p>19 Q Now, the 1C Romanette one refers to sales</p> <p>20 expenses that were being deducted from the</p> <p>21 proceeds and paid to Mr. Peck.</p> <p>22 Were there any sales expenses incurred in</p> <p>23 connection with this work that you're aware of?</p> <p>24 A No, there are no sales expenses in</p> <p>25 connection with this work that I'm aware of.</p> | <p style="text-align: right;">Page 177</p> <p>1 Q Was there ever a sale of the work by</p> <p>2 Mr. Peck?</p> <p>3 A I am aware of no sale by Mr. Peck of this</p> <p>4 work.</p> <p>5 Q Now, if you could --</p> <p>6 ARBITRATOR KRAMER: Can you tell me</p> <p>7 something about negotiation of the waterfall. Why</p> <p>8 was the figure of \$30 million selected?</p> <p>9 THE WITNESS: Yes. Good question.</p> <p>10 ARBITRATOR KRAMER: Thank you.</p> <p>11 THE WITNESS: I calculated that. I had a</p> <p>12 low minimum amount, 4.1 million, that I would</p> <p>13 settle for if the estimate on the work of art</p> <p>14 equated to that number; that's the low end. But I</p> <p>15 wanted to participate in the upper amount should</p> <p>16 the work of art sell for higher because I believe</p> <p>17 there was a possibility. I was hearing that</p> <p>18 there's a possibility that this work of art could</p> <p>19 sell for higher, so I was negotiating for the</p> <p>20 right to participate if it went above the</p> <p>21 4.1 million.</p> <p>22 ARBITRATOR KRAMER: Tell me about -- where</p> <p>23 you heard that it might -- what did you base your</p> <p>24 view that it might be worth as much as</p> <p>25 \$30 million? Conversations with people or what?</p> |

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| <p style="text-align: right;">Page 178</p> <p>1 THE WITNESS: So conversations with</p> <p>2 people, and also from Artnet which is the online</p> <p>3 auction results for any genre of art that you</p> <p>4 would elect to do your research on. It could be</p> <p>5 contemporary, in this case, Old Masters, and I was</p> <p>6 familiar with Old Masters in that they could reach</p> <p>7 a sale, according to conversations that I had with</p> <p>8 Christie's, according -- I heard from Mr. Peck</p> <p>9 himself that it might go as high as. He wasn't</p> <p>10 guaranteeing it, but -- you can't guarantee a sale</p> <p>11 that never happened -- but that it could go as</p> <p>12 high as 20, \$25 million.</p> <p>13 ARBITRATOR KRAMER: Could you just very</p> <p>14 quickly give me a five-minute background on how</p> <p>15 you participate in the art markets? Are you a</p> <p>16 buyer? Are you a dealer?</p> <p>17 THE WITNESS: Yes, yes. What's my</p> <p>18 participation in the art market?</p> <p>19 ARBITRATOR KRAMER: Yes.</p> <p>20 THE WITNESS: So I have a company called</p> <p>21 Loans on Fine Art. It loans money on fine art.</p> <p>22 So my background is -- I'm going to 71 in a few</p> <p>23 days. I've done deals for 46 years. I've had my</p> <p>24 own broker-dealer, and I've done a lot of dollars</p> <p>25 of transactions, and when I was going to college I</p> | <p style="text-align: right;">Page 179</p> <p>1 worked at a pawn shop, so the -- it was very</p> <p>2 interesting to me that loaning on high-end fine</p> <p>3 art would be the equivalent to the business model</p> <p>4 of a pawn shop. You take possession of the work,</p> <p>5 you loan at pennies on a dollar, if you don't get</p> <p>6 paid you take the work of art and you sell it.</p> <p>7 And then if you got paid off on your loan, then</p> <p>8 you would make a return on your money. It's that</p> <p>9 simple.</p> <p>10 ARBITRATOR KRAMER: But you don't have a</p> <p>11 background in art history, particularly an</p> <p>12 academic background in art history?</p> <p>13 THE WITNESS: No, and that's not unusual.</p> <p>14 I always rely upon third parties, appraisers, and</p> <p>15 experts in whatever the asset class it is. It's</p> <p>16 arms length to me.</p> <p>17 ARBITRATOR KRAMER: Do you loan in any</p> <p>18 other area besides fine art as part of your</p> <p>19 business?</p> <p>20 THE WITNESS: I have a housing development</p> <p>21 in Santa Barbara, California. That's real estate.</p> <p>22 I've done private money lending on real estate.</p> <p>23 ARBITRATOR KRAMER: Okay. I think I</p> <p>24 understand now. Thank you.</p> <p>25 BY MR. NIKAS:</p> |
| <p style="text-align: right;">Page 180</p> <p>1 Q Now, you said that Mr. Peck came up with</p> <p>2 this waterfall. Is he the one who put \$30 million</p> <p>3 on the upper register of this waterfall?</p> <p>4 If you look on page 3 of the settlement</p> <p>5 agreement.</p> <p>6 A I can't say for sure. I know that he --</p> <p>7 he was representing to me that it could go as high</p> <p>8 as up to 25 million.</p> <p>9 So if you look at the increments, they</p> <p>10 were going up, you know, you had six-million-ten,</p> <p>11 15, and then you jump to 20, so that's five</p> <p>12 million -- four million, five million, and then it</p> <p>13 jumped ten million. That covers -- it</p> <p>14 bracketed -- it brackets the 25 million. It's</p> <p>15 right in the middle. What would happen if it</p> <p>16 sells for a little over 25 million? So we wanted</p> <p>17 an outside number.</p> <p>18 Q And so this was a product of a discussion?</p> <p>19 A It was a negotiation.</p> <p>20 Q Okay. And you've already testified about</p> <p>21 why the minimum, we just talked about the maximum,</p> <p>22 so this provision contemplates a work being sold.</p> <p>23 If you could go to section --</p> <p>24 ARBITRATOR KRAMER: Let me just ask a</p> <p>25 question while we're on that page.</p> | <p style="text-align: right;">Page 181</p> <p>1 What is the deduction of 25 percent owing</p> <p>2 to a third party mean?</p> <p>3 THE WITNESS: You see that in all five</p> <p>4 sections of the waterfall, there's a 25 percent to</p> <p>5 a third party. Peck represented to me that he had</p> <p>6 other partners, and they were undisclosed to me.</p> <p>7 I didn't know who they were, so that's why they're</p> <p>8 called third parties.</p> <p>9 ARBITRATOR KRAMER: Okay.</p> <p>10 BY MR. NIKAS:</p> <p>11 Q Now, Section 1E says, if the work remains</p> <p>12 unsold after being offered at a second auction or</p> <p>13 private sale, GB has the right to permit further</p> <p>14 sales efforts or to receive full, unencumbered</p> <p>15 title to the work as consideration under this</p> <p>16 agreement, which shall be deemed to have a</p> <p>17 valuation of \$2 million by virtue of such prior</p> <p>18 history.</p> <p>19 Do you see that language?</p> <p>20 A I do, yes.</p> <p>21 Q Did the work get offered for sale twice?</p> <p>22 A As far as I know the work was never</p> <p>23 offered for sale by Mr. Peck.</p> <p>24 Q Why not?</p> <p>25 A Peck denied the opportunity of any sale</p> |

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| <p style="text-align: right;">Page 182</p> <p>1 because the work was never delivered.</p> <p>2 Q Do you believe under this provision you're</p> <p>3 entitled to the work itself?</p> <p>4 A I'm sorry. Somebody's -- can you repeat</p> <p>5 the question?</p> <p>6 Q Sure. Under this provision do you believe</p> <p>7 you're entitled to the work itself?</p> <p>8 A Yes.</p> <p>9 Q Why?</p> <p>10 A Under the conditions of the E, it states</p> <p>11 that if the work is offered at a second auction or</p> <p>12 private sale, meaning it had a first sale, and</p> <p>13 then a second sale, then I have the right to</p> <p>14 permit no further sale or receive the full</p> <p>15 unencumbered title. That means I get the title to</p> <p>16 the work. The literal interpretation of what it</p> <p>17 says. And it's consideration under the agreement.</p> <p>18 Q Now, Mr. Peck doesn't own the work, are</p> <p>19 you aware of that?</p> <p>20 A After we entered into the settlement</p> <p>21 agreement, and it was several months later that</p> <p>22 after we brought this action that I learned that</p> <p>23 Peck never owned the work.</p> <p>24 Q Now, this section references a \$2 million</p> <p>25 figure; do you see that?</p> | <p style="text-align: right;">Page 183</p> <p>1 A Yes.</p> <p>2 Q Why was that figure inserted?</p> <p>3 A So the context is important to answer your</p> <p>4 question. So what is the context? So if you have</p> <p>5 a work of art that goes unsold, or as we learned</p> <p>6 from Dr. Hunter's testimony, it goes to auction</p> <p>7 and there's no bidders, it's "body" and that means</p> <p>8 it unsold. It gets exposed to the market. Once</p> <p>9 it's exposed to the market and there are no</p> <p>10 buyers, then -- there a term that's used in art</p> <p>11 and high-end fine art. It's called the work is</p> <p>12 "burnt." It went for sale two times; no one</p> <p>13 bought it. It's been exposed; no one wants it;</p> <p>14 it's burnt. So for purposes of valuation for</p> <p>15 ACG's books, should work have been offered two</p> <p>16 times and it never got sold and I got the title</p> <p>17 for transfer purposes for the books of ACG, we</p> <p>18 agreed that even though it would be worth more</p> <p>19 should I hold it for a few years, which is --</p> <p>20 typical what happens with these works, the work is</p> <p>21 burnt, you hold it for a few years, you bring it</p> <p>22 back to the market, it's rehabilitated. It's</p> <p>23 brought back to the market and the value goes back</p> <p>24 up. This has happened -- traditional is what can</p> <p>25 happen.</p> |
| <p style="text-align: right;">Page 184</p> <p>1 So the number was a valuation that ACG</p> <p>2 would use for its books under the conditions that</p> <p>3 the work was burnt, and I would hold it for a few</p> <p>4 years and then bring it back to the market.</p> <p>5 Q So \$2 million is the burnt value</p> <p>6 basically?</p> <p>7 A \$2 million was the burnt value. That's</p> <p>8 the short answer. Sorry it's such a long answer.</p> <p>9 Q Now, Section 6C says, to the knowledge of</p> <p>10 ACG, the work is not subject to any claims or</p> <p>11 rights either potential, threatened, or pending</p> <p>12 that could prevent ACG from performing the terms</p> <p>13 of this agreement, or that could result in a</p> <p>14 claw-back from any proceeds through GB under the</p> <p>15 terms of this agreement.</p> <p>16 Do you see that?</p> <p>17 A I do see it.</p> <p>18 Q Did Mr. Peck agree to this as part of the</p> <p>19 settlement?</p> <p>20 A Yes, he did.</p> <p>21 Q Representation E in this section says, the</p> <p>22 work is an authentic work of art by Andrea del</p> <p>23 Sarto as described above in Section 1A; do you see</p> <p>24 that?</p> <p>25 A Yes, I do.</p> | <p style="text-align: right;">Page 185</p> <p>1 Q Section 1A says, Andrea del Sarto, title,</p> <p>2 Ottaviano de' Medici, and then describes other</p> <p>3 features of the work; do you see that?</p> <p>4 A Section 1 you say?</p> <p>5 Q 1A?</p> <p>6 A 1A, yes, I see it.</p> <p>7 Q So Mr. Peck agreed to these terms as part</p> <p>8 of the settlement agreement?</p> <p>9 A Yes. These are -- you're talking about</p> <p>10 the representations that Mr. Peck is making to me</p> <p>11 to induce me into this agreement.</p> <p>12 Q Did Mr. -- did you believe these</p> <p>13 representations when they were put in this</p> <p>14 contract?</p> <p>15 A I absolutely did at the time.</p> <p>16 Q Were they important to you?</p> <p>17 A They were critical. Without them, there</p> <p>18 would be no settlement. I want to say it. It</p> <p>19 turned out to be a lie.</p> <p>20 ARBITRATOR KRAMER: Let's wait for</p> <p>21 questions.</p> <p>22 BY MR. NIKAS:</p> <p>23 Q Now, you're talking about 6D and C being a</p> <p>24 lie? I want to understand what you're referring</p> <p>25 to.</p> |

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| <p style="text-align: right;">Page 186</p> <p>1 A Yes.</p> <p>2 Q Okay. Now, Section 13 of this agreement,</p> <p>3 on page 7, says, five lines down, the parties</p> <p>4 shall share equally in the cost of such</p> <p>5 arbitration, and then continues, each party shall</p> <p>6 pay their own attorney's fees, and so forth.</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q Has Mr. Peck paid any of the costs that</p> <p>10 this provision says he shall share equally in?</p> <p>11 A Mr. Peck has not paid one penny of the</p> <p>12 costs in connection with this arbitration</p> <p>13 proceeding, not a penny.</p> <p>14 Q Now, if we go down after it says the</p> <p>15 parties shall share equally in the costs, there's</p> <p>16 a next section is not in all caps. It says, in</p> <p>17 such an arbitration, if either party fails to pay</p> <p>18 an invoiced arbitration by the 30-day due date for</p> <p>19 such payment, the other party may provide notice,</p> <p>20 and that if payment is not made by the other party</p> <p>21 within 15 days of such notice, that the notifying</p> <p>22 party shall exercise its option to terminate the</p> <p>23 arbitration and to pursue the adjudication of the</p> <p>24 dispute in state or federal court.</p> <p>25 Do you see that?</p> | <p style="text-align: right;">Page 187</p> <p>1 A I do see it.</p> <p>2 Q Why did that -- who negotiated that</p> <p>3 language in this section?</p> <p>4 A I negotiated that language.</p> <p>5 Q How did that end up in there? Why?</p> <p>6 A So the reason why it's in here is that I</p> <p>7 wanted to ensure that I can hold Peck accountable</p> <p>8 should he not pay his arbitration fees. I started</p> <p>9 thinking as a business decision, if someone would</p> <p>10 think about the hypothetical scenarios that could</p> <p>11 evolve if the settlement agreement went bad, what</p> <p>12 would happen if I was in a situation and the</p> <p>13 settlement agreement was breached and I -- in --</p> <p>14 and I took this literally that I may -- it was my</p> <p>15 choice to go to arbitration, that Peck could not</p> <p>16 prevent me from holding him accountable by him not</p> <p>17 paying his fees. It was known to me this one of</p> <p>18 Peck's litigation strategies. I wanted to prevent</p> <p>19 that. I wanted to take that away from him. If</p> <p>20 I'm going to enter into the settlement agreement</p> <p>21 that I would get stuck in, what's the point? I</p> <p>22 wanted to be able to proceed.</p> <p>23 Q Did you believe that Mr. Peck was required</p> <p>24 to pay half the fees under this provision?</p> <p>25 A Yes.</p> |
| <p style="text-align: right;">Page 188</p> <p>1 Q Did you believe that you were required to</p> <p>2 file a state court case if Mr. Peck failed to pay?</p> <p>3 A Not required, an option. An option is not</p> <p>4 an obligation. It's not required. It's in the</p> <p>5 sole -- in my sole discretion should I want to</p> <p>6 pursue this in civil or federal court, I would.</p> <p>7 But what's the point of that? I have JAMS. I</p> <p>8 figured that JAMS was efficient. I figured that</p> <p>9 JAMS would take less time. I figured that JAMS</p> <p>10 would be less expensive, so what would be the</p> <p>11 point?</p> <p>12 ARBITRATOR KRAMER: Okay. I hope you</p> <p>13 haven't been disappointed because I've slowed down</p> <p>14 things a couple of times.</p> <p>15 BY MR. NIKAS:</p> <p>16 Q Now Section 2 on page 3.</p> <p>17 A Section 2?</p> <p>18 Q Page 3. It says "releases."</p> <p>19 A Section 2, page 3, okay. Section 2.</p> <p>20 Q It says, an exchange for and consideration</p> <p>21 of the promises in the agreement set forth herein,</p> <p>22 upon execution of this agreement, GB on the one</p> <p>23 hand, ACG on the other, and then goes to list a</p> <p>24 long provision that under which the parties</p> <p>25 release to each other for claims.</p> | <p style="text-align: right;">Page 189</p> <p>1 Do you recall entering the agreement with</p> <p>2 that provision in it?</p> <p>3 A I do. I do recall that. Yes, I see it.</p> <p>4 Q Now, are you aware that Mr. Kramer found</p> <p>5 that the respondents' counterclaims against you</p> <p>6 and the other claimants must be dismissed under</p> <p>7 the terms of this release?</p> <p>8 A Yes.</p> <p>9 Q Did you pay legal expenses to defend</p> <p>10 against those claims?</p> <p>11 A Absolutely.</p> <p>12 Q Now, I read earlier testimony that</p> <p>13 Mr. Peck gave at the preliminary injunction</p> <p>14 hearing where he said it would be important to</p> <p>15 sell this work under consignment agreement where</p> <p>16 Christie's had spent a lot of money marketing the</p> <p>17 work, giving the work PR, publicity, traveling the</p> <p>18 work wherever it needed to travel to show to</p> <p>19 important collectors.</p> <p>20 Do you agree that that was an appropriate</p> <p>21 way to handle the sale of this work?</p> <p>22 MR. PRESS: Object to form.</p> <p>23 ARBITRATOR KRAMER: Overruled.</p> <p>24 THE WITNESS: Yes.</p> <p>25 BY MR. NIKAS:</p> |

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| <p style="text-align: right;">Page 190</p> <p>1 Q And had you discussed that plan with</p> <p>2 Christie's after the settlement was reached --</p> <p>3 excuse me. Leading up to settlement. We already</p> <p>4 talked about Christie's afterwards.</p> <p>5 Leading up to the settlement, did you talk</p> <p>6 with Christie's about that approach to the sale?</p> <p>7 A I spoke with Christie's in detail about</p> <p>8 the business plan in terms of marketing the -- I</p> <p>9 call it the Sarto, the work of art, the subject</p> <p>10 work of art. I talked with them, yes.</p> <p>11 Q Now, did you receive any pushback in those</p> <p>12 discussions when you talked about approaching the</p> <p>13 sale in that manner?</p> <p>14 A Pushback from?</p> <p>15 Q From Christie's?</p> <p>16 A Oh, from Christie's? Quite the contrary.</p> <p>17 ARBITRATOR KRAMER: Why don't you describe</p> <p>18 your conversation with Christie's leading to the</p> <p>19 marketing -- potential marketing of the del Sarto.</p> <p>20 THE WITNESS: Christie's opinion in terms</p> <p>21 of -- in what they were prepared to do in terms of</p> <p>22 marketing the Sarto. They intended to do several</p> <p>23 things. First thing, is they -- they were going</p> <p>24 to --</p> <p>25 MR. PRESS: I'm sorry. I just need to</p> | <p style="text-align: right;">Page 191</p> <p>1 object to the hearsay.</p> <p>2 ARBITRATOR KRAMER: Pardon me?</p> <p>3 MR. PRESS: I'm objecting on the grounds</p> <p>4 of hearsay. He's talking about what Christie's</p> <p>5 told him. Christie's isn't here.</p> <p>6 ARBITRATOR KRAMER: Right. Overruled.</p> <p>7 THE WITNESS: Christie's was going to make</p> <p>8 preparations for the literature, first of all, and</p> <p>9 it was going to be approved, and then with the</p> <p>10 literature they were going to -- this during</p> <p>11 COVID -- they were going to fly it around, all</p> <p>12 over the world, and set up a private viewings</p> <p>13 in -- what did we use to call it? In safe-masked</p> <p>14 environments, controlled environments, and show</p> <p>15 the works of art individually with all their known</p> <p>16 collectors around the world. They were going to</p> <p>17 produce a banner that would go on the side of the</p> <p>18 Rockefeller Center of the portrait. They were</p> <p>19 talking in the range of spending a significant</p> <p>20 amount of money, 500, 600, 700, \$800,000 just to</p> <p>21 market it.</p> <p>22 BY MR. NIKAS:</p> <p>23 Q And who did you have that conversation</p> <p>24 with?</p> <p>25 A Josh Glazer.</p> |
| <p style="text-align: right;">Page 192</p> <p>1 Q Was that leading up to the settlement</p> <p>2 agreement that you entered into?</p> <p>3 A Yes.</p> <p>4 MR. NIKAS: I have no further questions.</p> <p>5 ARBITRATOR KRAMER: Mr. Press?</p> <p>6 MR. PRESS: Yes, I have some questions.</p> <p>7 THE WITNESS: You want me on the other</p> <p>8 side?</p> <p>9 ARBITRATOR KRAMER: Yes, I do.</p> <p>10 C R O S S - E X A M I N A T I O N</p> <p>11 BY MR. PRESS:</p> <p>12 Q All right, Mr. Greenberg, you testified</p> <p>13 just now that that Mr. Peck e-mailed you some</p> <p>14 materials concerning the painting that ended up</p> <p>15 appearing in the Hunter expert report; do you</p> <p>16 recall that?</p> <p>17 A Yes.</p> <p>18 Q Okay. And in discovery in this case, you</p> <p>19 recall that the respondents sought e-mails and</p> <p>20 other communications of yours prior to the date of</p> <p>21 the settlement agreement?</p> <p>22 A I produced one or two e-mails, if memory</p> <p>23 serves, that you requested of me.</p> <p>24 Q Okay. And you didn't produce any e-mail</p> <p>25 in which Mr. Peck sent you those materials, did</p> | <p style="text-align: right;">Page 193</p> <p>1 you?</p> <p>2 A You asked for e-mails in a certain time</p> <p>3 frame, and the e-mails I got from Mr. Peck were</p> <p>4 outside of that time frame, if I recall correctly.</p> <p>5 Q Sitting here today, in this room, you</p> <p>6 don't have a transmittal e-mail that shows</p> <p>7 Mr. Peck sending you these materials, do you?</p> <p>8 A Are you asking me to look in my phone?</p> <p>9 ARBITRATOR KRAMER: He's asking you do you</p> <p>10 know whether you have somewhere in your file your</p> <p>11 e-mail that transmitted the materials in the</p> <p>12 appendix.</p> <p>13 THE WITNESS: I don't know how far back my</p> <p>14 e-mail records go because that was second -- it's</p> <p>15 a little fuzzy -- second quarter of 2019, third</p> <p>16 quarter of 2019, something like that.</p> <p>17 BY MR. PRESS:</p> <p>18 Q Okay. Now, isn't true that you actually</p> <p>19 hired Dr. Robert Simon who's here today as your</p> <p>20 expert in order to assess the condition and other</p> <p>21 factors concerning the painting, correct?</p> <p>22 A I didn't pay Dr. Simon.</p> <p>23 ARBITRATOR KRAMER: The question is</p> <p>24 whether you retained him. Did you hire him</p> <p>25 regardless of whether you paid him.</p> |

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| <p style="text-align: right;">Page 194</p> <p>1 THE WITNESS: Okay. Yes.</p> <p>2 BY MR. PRESS:</p> <p>3 Q Okay. You selected Dr. Simon among other</p> <p>4 potential experts as an expert you wanted to use,</p> <p>5 correct?</p> <p>6 A Yes.</p> <p>7 Q And what you wanted to do is use him to</p> <p>8 appraise and analyze the painting, correct?</p> <p>9 A Yes.</p> <p>10 Q And isn't a fact that the materials that</p> <p>11 found their way into the Hunter report actually</p> <p>12 came to you through Dr. Simon?</p> <p>13 A No.</p> <p>14 Q No, okay. And now, the reason you wanted</p> <p>15 an independent expert to review and analyze the</p> <p>16 painting was so that you wouldn't have to rely on</p> <p>17 materials from the owner, correct?</p> <p>18 MR. NIKAS: Objection to the word</p> <p>19 independent. There is no foundation that this was</p> <p>20 independent of Mr. Peck.</p> <p>21 MR. PRESS: Okay.</p> <p>22 ARBITRATOR KRAMER: Reask the question.</p> <p>23 MR. PRESS: Sure.</p> <p>24 BY MR. PRESS:</p> <p>25 Q Okay. The reason you wanted a person</p> | <p style="text-align: right;">Page 195</p> <p>1 independent of the paint's owner to analyze the</p> <p>2 painting is so that would you have an independent</p> <p>3 opinion, correct?</p> <p>4 MR. NIKAS: Same objection.</p> <p>5 ARBITRATOR KRAMER: Overruled.</p> <p>6 BY MR. PRESS:</p> <p>7 Q You can answer.</p> <p>8 A Yes, I wanted an independent opinion from</p> <p>9 an expert because I'm not an expert.</p> <p>10 Q Right. And you respected Dr. Simon,</p> <p>11 correct?</p> <p>12 A Yes.</p> <p>13 Q And you thought that he could do a fair</p> <p>14 and accurate appraisal of the painting?</p> <p>15 A Yes.</p> <p>16 Q And you're aware that Dr. Simon actually</p> <p>17 went and viewed the painting on one occasion,</p> <p>18 right?</p> <p>19 A Two times that I'm aware of.</p> <p>20 ARBITRATOR KRAMER: When did you know that</p> <p>21 Dr. Simon went to look at the painting?</p> <p>22 THE WITNESS: He went a couple of times</p> <p>23 between approximately July of 2019 and December,</p> <p>24 something like that, 2019.</p> <p>25 BY MR. PRESS:</p> |
| <p style="text-align: right;">Page 196</p> <p>1 Q Okay. And Dr. Simon communicated to you</p> <p>2 what his findings were from those visits, right?</p> <p>3 A They were not conclusionary.</p> <p>4 Q Okay. Yes or no, he did communicate to</p> <p>5 you, right?</p> <p>6 A He told me that they weren't</p> <p>7 conclusionary.</p> <p>8 Q Okay.</p> <p>9 A Basically.</p> <p>10 Q Okay. And what he said is -- you say --</p> <p>11 first of all, let's just get this out of the way.</p> <p>12 He talked to you about his visits at the painting,</p> <p>13 yes or no?</p> <p>14 A Yes.</p> <p>15 Q And as to -- and he didn't -- as you say,</p> <p>16 he didn't reach conclusions, but did you tell</p> <p>17 facts that he observed when he viewed the</p> <p>18 painting?</p> <p>19 A He gave me hearsay, and it means nothing</p> <p>20 to me.</p> <p>21 Q Okay.</p> <p>22 A We hired him for a written appraisal which</p> <p>23 never materialized.</p> <p>24 Q Okay. You say he gave you hearsay. What</p> <p>25 did he tell you?</p> | <p style="text-align: right;">Page 197</p> <p>1 A He saw the painting twice. The second</p> <p>2 time he had brought Diane Modestini with him, and</p> <p>3 they required the work to be delivered to Diane</p> <p>4 Modestini's laboratory before he would put a</p> <p>5 report -- put anything in writing.</p> <p>6 Q Okay. And Diane Modestini, she was an art</p> <p>7 conservator, correct?</p> <p>8 A I believe she was. I think she still is.</p> <p>9 I don't know if she's still practicing, but...</p> <p>10 Q All right. And you understood that her</p> <p>11 role was to take the painting to a laboratory and</p> <p>12 examine its condition, correct?</p> <p>13 A Yes.</p> <p>14 Q And in fact, Dr. Simon told you that the</p> <p>15 condition of the painting was in question,</p> <p>16 correct?</p> <p>17 A He had questions about the condition,</p> <p>18 that's why we brought her in.</p> <p>19 Q Okay. And do you recall Dr. Simon was not</p> <p>20 satisfied with representations that the owner had</p> <p>21 made concerning the restoration of the work?</p> <p>22 A He had questions, that's why he wanted</p> <p>23 Diane Modestini involved.</p> <p>24 Q At some point you became frustrated with</p> <p>25 this process and decided to use Christie's to</p> |

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| <p style="text-align: right;">Page 198</p> <p>1 value work instead, right?</p> <p>2 A Yes.</p> <p>3 Q So that's when you reached out to somebody</p> <p>4 at Christie's?</p> <p>5 A Yes.</p> <p>6 Q And you actually reached yourself to Josh</p> <p>7 Glazer, didn't you?</p> <p>8 A Yes.</p> <p>9 Q Okay. And you said that you had extensive</p> <p>10 discussions with Josh Glazer?</p> <p>11 A Yes.</p> <p>12 Q Okay. And you said you told them your</p> <p>13 business plan for -- you discussed a business plan</p> <p>14 for sale of the painting, right?</p> <p>15 A Yes.</p> <p>16 Q You told him that you wanted to sell the</p> <p>17 painting quickly, didn't you?</p> <p>18 A I asked him when the best time to sell it</p> <p>19 would be. I didn't instruct him. He's the</p> <p>20 expert.</p> <p>21 Q You wanted to get money quickly in</p> <p>22 settlement of the dispute you had with Mr. Peck;</p> <p>23 fair to say?</p> <p>24 A I wasn't interested in cutting my nose off</p> <p>25 to spite my face selling it too quick for too</p> | <p style="text-align: right;">Page 199</p> <p>1 cheap. I was asking him when the right time to</p> <p>2 sell it was.</p> <p>3 Q In negotiating the settlement agreement,</p> <p>4 in the time period of the settlement agreement,</p> <p>5 you want to ensure that the painting was sold very</p> <p>6 soon or after the agreement itself, correct?</p> <p>7 A As soon as Josh Glazer would advise.</p> <p>8 Q And Josh Glazer, he also told you that he</p> <p>9 needed to see the painting firsthand in order to</p> <p>10 evaluate of its condition?</p> <p>11 A Yes.</p> <p>12 Q And he told you that the condition was a</p> <p>13 very important factor in valuing that painting,</p> <p>14 right?</p> <p>15 A Yes.</p> <p>16 Q Now --</p> <p>17 A He also said that unless a truck ran</p> <p>18 through it or someone put a fist through it, that</p> <p>19 the digital images -- if it showed up like digital</p> <p>20 images, that the business plans would be executed.</p> <p>21 Q Okay. And the business plan involved</p> <p>22 selling the painting in the April 2021 Christie's</p> <p>23 auction in New York, correct?</p> <p>24 A He advised that he had a stable of Old</p> <p>25 Masters collectors and investors that he was</p> |
| <p style="text-align: right;">Page 200</p> <p>1 targeting in particular here in New York, and</p> <p>2 April 2021 was a perfect to sell it.</p> <p>3 Q Right, but the agreement, the settlement</p> <p>4 agreement which we looked at, Exhibit 1, that has</p> <p>5 a timeline on it, correct?</p> <p>6 A Yes.</p> <p>7 Q And you negotiated for that timeline,</p> <p>8 right?</p> <p>9 A Yes.</p> <p>10 Q And you wanted the painting to sell in</p> <p>11 that April Christie's sale?</p> <p>12 A Which is in line with what Josh Glazer had</p> <p>13 advised.</p> <p>14 Q Okay. You were not interested in taking</p> <p>15 time to have further restoration work done on the</p> <p>16 painting and having it sold at a later time; fair</p> <p>17 to say?</p> <p>18 A If the work would have been delivered to</p> <p>19 Josh Glazer and said it needs further restoration,</p> <p>20 I would defer to his opinion. The work was never</p> <p>21 delivered.</p> <p>22 Q Okay. And you knew prior to the</p> <p>23 settlement agreement that Mr. Peck was in</p> <p>24 contract, or one of his entities was in contract</p> <p>25 to buy the painting, correct?</p> | <p style="text-align: right;">Page 201</p> <p>1 A Yes.</p> <p>2 Q Okay. Now, directing your attention to</p> <p>3 the settlement, Exhibit 1?</p> <p>4 A I need to look it up.</p> <p>5 Q Yes, take your time. I know you moved,</p> <p>6 so...</p> <p>7 A It's Exhibit 1?</p> <p>8 Q Yes.</p> <p>9 A What section do you need me to be on?</p> <p>10 Q I'd like you to turn to the second page.</p> <p>11 A Second page, okay.</p> <p>12 Q Now, your counsel showed you Section 1A,</p> <p>13 Romanette two, the little ii, okay. "GB" this is</p> <p>14 the part where -- the one where you point out that</p> <p>15 you were GB; do you remember that?</p> <p>16 A Yes.</p> <p>17 Q Okay. So GB has a right to terminate this</p> <p>18 agreement and sole discretion if the auctioneer</p> <p>19 provides a low-end estimate of less than four</p> <p>20 million; you got that? Do you remember that?</p> <p>21 A I do, and I see it.</p> <p>22 Q Yes. And the reason you put that in was</p> <p>23 because you had not yet obtained a definitive</p> <p>24 finding on the condition of the painting, and you</p> <p>25 wanted help if the painting was an important</p> |

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| <p style="text-align: right;">Page 202</p> <p>1 issue; fair to say?</p> <p>2 A For whatever reason, if the estimate, any</p> <p>3 of the due diligence criteria that an expert would</p> <p>4 use to weigh such as all of the criteria that the</p> <p>5 Dr. Hunter had already testified to, if any of</p> <p>6 those things were incorrect, and that impacted the</p> <p>7 value to make it less than \$4 million, I wanted</p> <p>8 the right to get out.</p> <p>9 Q Right. So you negotiated yourself a way</p> <p>10 to get out of the deal if there were</p> <p>11 representations that turned out to be incorrect</p> <p>12 concerning the value of the painting?</p> <p>13 A Yes.</p> <p>14 MR. NIKAS: Objection.</p> <p>15 BY MR. PRESS:</p> <p>16 Q And turning the page to -- actually,</p> <p>17 turning the page to page 2, I guess we're on page</p> <p>18 2. The bottom of page 2, Section 1C, that's the</p> <p>19 waterfall, correct?</p> <p>20 A That's the beginning of the waterfall.</p> <p>21 Q That's right. In the waterfall, the first</p> <p>22 item, there's a ten percent that came off the top</p> <p>23 payable to ACG; do you see that?</p> <p>24 A Yes.</p> <p>25 Q Okay. And that came off the top no matter</p> | <p style="text-align: right;">Page 203</p> <p>1 what level the sales price went to; fair to say?</p> <p>2 A Yes.</p> <p>3 Q And looking down at Section 1E, you gave</p> <p>4 some testimony about this -- the reason for that</p> <p>5 provision; do you remember that?</p> <p>6 A 1E, the reason for that provision, yes, I</p> <p>7 testified to that.</p> <p>8 Q That's right. And you said that, in fact,</p> <p>9 the painting was not -- did not fail to sell two</p> <p>10 times, correct?</p> <p>11 A Yes.</p> <p>12 Q And I understand that's because Mr. Peck</p> <p>13 was never able to deliver the painting to</p> <p>14 Christie's or another auctioneer, right?</p> <p>15 A No. Wait a second. Can you ask that</p> <p>16 again, sorry.</p> <p>17 Q Sure, sure. You testified that -- I don't</p> <p>18 believe it's controversial -- Mr. Peck was never</p> <p>19 able to deliver the painting to Christie's or</p> <p>20 another auctioneer, right?</p> <p>21 A Yes.</p> <p>22 Q Okay. And you now understand that because</p> <p>23 Virginia Bonito didn't deliver the painting,</p> <p>24 right?</p> <p>25 A Now I do.</p> |
| <p style="text-align: right;">Page 204</p> <p>1 Well, wait a second. I didn't have an</p> <p>2 agreement Virginia Bonito. I had an agreement</p> <p>3 with Mr. Peck.</p> <p>4 MR. PRESS: Move to strike as</p> <p>5 nonresponsive. That's not the question.</p> <p>6 BY MR. PRESS:</p> <p>7 Q Returning to E, it's a fact that the work,</p> <p>8 the painting, did not remain unsold after being</p> <p>9 offered at a second auction or private sale,</p> <p>10 right?</p> <p>11 A I don't understand the question.</p> <p>12 Q Okay. The I'll ask it again. Isn't it a</p> <p>13 fact that the work did not remain unsold after</p> <p>14 being offered at a second auction or private sale?</p> <p>15 A That doesn't make sense to me.</p> <p>16 Q No?</p> <p>17 ARBITRATOR KRAMER: Well, I think what</p> <p>18 he's asking this paragraph was never triggered</p> <p>19 because the painting was never auctioned or</p> <p>20 offered twice.</p> <p>21 THE WITNESS: Yes, that I understand.</p> <p>22 ARBITRATOR KRAMER: I think that's his</p> <p>23 question.</p> <p>24 BY MR. PRESS:</p> <p>25 Q So you agree that provision was never</p> | <p style="text-align: right;">Page 205</p> <p>1 triggered, right?</p> <p>2 MR. NIKAS: Objection.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. PRESS:</p> <p>5 Q Turning to Section 6 that we looked at</p> <p>6 before and you did with your counsel. Those are</p> <p>7 the representations by ACG, right?</p> <p>8 A Yes.</p> <p>9 Q Okay. And if we look at some of them, you</p> <p>10 said that -- so representation 6A says ACG has the</p> <p>11 right to consign the work to the auctioneer for</p> <p>12 sale consistent with the terms in this agreement,</p> <p>13 and the right to perform all obligations set forth</p> <p>14 in this agreement.</p> <p>15 Do you see that?</p> <p>16 A Yes.</p> <p>17 Q Okay. And your position in this case that</p> <p>18 was a false representation, right?</p> <p>19 A Yes, it was a lie.</p> <p>20 Q Okay. And then in 6B, it says, ACG has</p> <p>21 the right to pay GB the proceeds of the sale of</p> <p>22 the work consistent with the terms of the</p> <p>23 agreement.</p> <p>24 Do you see that?</p> <p>25 A Yes.</p> |

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| <p style="text-align: right;">Page 206</p> <p>1 Q And that's another provision that you said</p> <p>2 turned out to be false, correct?</p> <p>3 A Yes.</p> <p>4 Q Okay.</p> <p>5 A False.</p> <p>6 Q And were those representations materially</p> <p>7 false to you?</p> <p>8 A Now? Sitting here today, yes, they're</p> <p>9 still false.</p> <p>10 Q Okay. Now, directing your attention to</p> <p>11 the paragraph at the end of Section 6. It says,</p> <p>12 in the event any such representation is materially</p> <p>13 false, GB shall have the option to cancel this</p> <p>14 agreement and pursue all legal claims against ACG</p> <p>15 in binding arbitration before JAMS under the</p> <p>16 arbitration provision set forth in Section 13</p> <p>17 below.</p> <p>18 Do you see that?</p> <p>19 A Yes.</p> <p>20 Q Okay. You didn't exercise that option,</p> <p>21 correct?</p> <p>22 A Are you asking me if I canceled this</p> <p>23 agreement?</p> <p>24 Q Correct. Did you cancel the agreement?</p> <p>25 A I don't think so.</p> | <p style="text-align: right;">Page 207</p> <p>1 Q Okay. And -- well, in fact, you didn't</p> <p>2 cancel the agreement; you're suing to enforce the</p> <p>3 agreement, aren't you?</p> <p>4 A Yes.</p> <p>5 Q And so you made that choice as a business</p> <p>6 decision, correct?</p> <p>7 MR. NIKAS: Objection. Based on</p> <p>8 privilege, he was advised as to why he exercised</p> <p>9 the strategic course he took.</p> <p>10 MR. PRESS: I'm not asking about</p> <p>11 privileged communication.</p> <p>12 BY MR. PRESS:</p> <p>13 Q I'm just asking you made a business</p> <p>14 decision to sue under the contract rather than</p> <p>15 cancel the contract, right?</p> <p>16 MR. NIKAS: I have the same objection.</p> <p>17 ARBITRATOR KRAMER: That's sustained. He</p> <p>18 did it on instruction based on legal advice.</p> <p>19 MR. PRESS: Okay.</p> <p>20 BY MR. PRESS:</p> <p>21 Q Now, looking at one paragraph up,</p> <p>22 Section 6E. I think you looked at this with your</p> <p>23 counsel. The work, an authentic work of art by</p> <p>24 Andrea del Sarto as described above in Section 1E.</p> <p>25 Do you see that?</p> |
| <p style="text-align: right;">Page 208</p> <p>1 A Yes.</p> <p>2 Q Okay. There is no similar representation</p> <p>3 about any other aspect of the painting in this</p> <p>4 agreement, is there?</p> <p>5 A I may have to read this.</p> <p>6 Q Have a look.</p> <p>7 A There is a representation about the</p> <p>8 artist, the title, the medium, the size, the date.</p> <p>9 Q Where is that?</p> <p>10 A It's under 1A.</p> <p>11 Q Okay. And there's no representation as</p> <p>12 to -- concerning the condition of the painting, is</p> <p>13 there?</p> <p>14 A That representation was in the diligence,</p> <p>15 I believe. Without thoroughly going through this</p> <p>16 agreement and combing through here to see if your</p> <p>17 question is true or false, the -- I accepted the</p> <p>18 work based on the diligence, the promises that</p> <p>19 everything in the diligence was correct, and that</p> <p>20 was the inducement for me to enter into this</p> <p>21 agreement.</p> <p>22 Q Okay. And directing your attention to</p> <p>23 page 8 of this document.</p> <p>24 A Eight?</p> <p>25 Q Eight, yes.</p> | <p style="text-align: right;">Page 209</p> <p>1 A I'm there.</p> <p>2 Q And Mr. Nikas was your counsel in</p> <p>3 connection with negotiating this agreement,</p> <p>4 correct?</p> <p>5 A Yes.</p> <p>6 Q Okay. And you had access to him to get</p> <p>7 legal advice concerning the agreement?</p> <p>8 A Yes.</p> <p>9 Q Okay. And directing your attention to</p> <p>10 paragraph 16. It says, entire agreement, okay,</p> <p>11 and I'll just read it into the record. It says,</p> <p>12 this agreement constitutes the entire agreement</p> <p>13 and understanding of the parties with respect to</p> <p>14 the subject matters hereof and thereof, and</p> <p>15 supersedes all prior agreements and</p> <p>16 understandings, both written or oral, of the</p> <p>17 parties regarding the subject matter hereof and</p> <p>18 thereof.</p> <p>19 Do you see that?</p> <p>20 A Yes.</p> <p>21 Q Do you understand this to be what's called</p> <p>22 an integration clause?</p> <p>23 A What do you call it?</p> <p>24 Q Withdrawn.</p> <p>25 You understood then that anything that was</p> |

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| <p style="text-align: right;">Page 210</p> <p>1 not actually represented in the body of this</p> <p>2 agreement, you were -- were superseded by the</p> <p>3 contents of this agreement; did you understand</p> <p>4 that?</p> <p>5 MR. NIKAS: Objection.</p> <p>6 MR. PRESS: You can answer.</p> <p>7 ARBITRATOR KRAMER: He can answer if he</p> <p>8 understands it. The question was if Mr. Peck had</p> <p>9 made a lot of representations that didn't find</p> <p>10 their way into this agreement, you understand that</p> <p>11 paragraph 16 would bar you from relying on those?</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. PRESS:</p> <p>14 Q Now, turning to paragraph 13, which is on</p> <p>15 page 7, dispute resolution. I believe you looked</p> <p>16 at it with your counsel.</p> <p>17 A I'm sorry?</p> <p>18 Q Paragraph 13.</p> <p>19 A Paragraph 13, I'm there.</p> <p>20 Q That was the one where five lines down it</p> <p>21 says, the parties shall share equally in the costs</p> <p>22 of such arbitration, and each party shall bear</p> <p>23 their own attorney's fees and costs, and it says,</p> <p>24 clarity, the arbitration award shall not award</p> <p>25 attorney's fees or cost to the prevailing party.</p> | <p style="text-align: right;">Page 211</p> <p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q Okay. And despite that provision, are you</p> <p>4 seeking an award of attorney's fees and costs from</p> <p>5 ACG and the respondents?</p> <p>6 A I'm seeking damages and an award in</p> <p>7 connection with Mr. Peck's share of JAMS and for</p> <p>8 breaching the release provision in which he filed</p> <p>9 counterclaims that were set aside or denied by the</p> <p>10 arbitrator.</p> <p>11 Q So you are seeking an award of legal fees</p> <p>12 in connection with the counterclaim in this</p> <p>13 proceeding?</p> <p>14 A Yes.</p> <p>15 Q Okay. But you see here that the provision</p> <p>16 says that each party -- each side will bear their</p> <p>17 own attorney's fees and costs; do you see that?</p> <p>18 A Yes.</p> <p>19 Q Okay. And in fact, it even says for</p> <p>20 clarity, the arbitration award shall not award</p> <p>21 attorney's fees or costs to prevailing party; do</p> <p>22 you see that?</p> <p>23 A That's the prevailing party in terms of</p> <p>24 the breach, but not in terms of -- there's two</p> <p>25 claims in my view. One is for the releases, the</p> |
| <p style="text-align: right;">Page 212</p> <p>1 frivolous counterclaims that you brought that were</p> <p>2 already precluded under this agreement that you</p> <p>3 partly offered, and the other is for Peck's --</p> <p>4 Mr. Peck's share of the JAMS fees that he didn't</p> <p>5 pay.</p> <p>6 Q Okay. Well, let's start with the</p> <p>7 arbitration -- the attorney's fees. Can you show</p> <p>8 me anything in this agreement that requires the</p> <p>9 respondents, or either side, the losing part to</p> <p>10 pay attorney's fees of any kind?</p> <p>11 MR. NIKAS: Objection. The source of the</p> <p>12 claim is the agreement. There's no foundation for</p> <p>13 that question.</p> <p>14 ARBITRATOR KRAMER: Overruled.</p> <p>15 MR. PRESS: So can he answer?</p> <p>16 ARBITRATOR KRAMER: I think the answer is</p> <p>17 that the only thing that applies to attorney's</p> <p>18 fees is in this paragraph 13.</p> <p>19 THE WITNESS: It looks that way.</p> <p>20 ARBITRATOR KRAMER: And whether it's</p> <p>21 appropriate for me to award attorney's fees on</p> <p>22 this other claim is an issue for me.</p> <p>23 MR. PRESS: Okay.</p> <p>24 ARBITRATOR KRAMER: And in interpreting</p> <p>25 the contract.</p> | <p style="text-align: right;">Page 213</p> <p>1 MR. PRESS: Okay. I'll leave it at that.</p> <p>2 BY MR. PRESS:</p> <p>3 Q Finally, as to -- well, not finally, but</p> <p>4 you looked with your counsel at the provision at</p> <p>5 the end of paragraph 13 that you said you</p> <p>6 specifically negotiated; do you recall that?</p> <p>7 A Yes.</p> <p>8 Q And that was the provision that would</p> <p>9 allow you in the event that the respondents didn't</p> <p>10 share equally in the arbitration costs to provide</p> <p>11 notice, and then if within 15 days of such notice</p> <p>12 that if the other half of the fees weren't paid,</p> <p>13 you had the option to terminate the arbitration</p> <p>14 and pursue adjudication in the state and federal</p> <p>15 court; do you recall that?</p> <p>16 A Yes.</p> <p>17 Q Okay. And you testified the respondents</p> <p>18 didn't pay their fair share of the arbitration</p> <p>19 costs, right?</p> <p>20 A Yes.</p> <p>21 Q And -- but you didn't exercise this</p> <p>22 option?</p> <p>23 A I'm trying enforce this option because the</p> <p>24 respondents didn't pay their share.</p> <p>25 Q You didn't exercise the option to take the</p> |

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| <p style="text-align: right;">Page 214</p> <p>1 case out of arbitration --</p> <p>2 A Oh, that part?</p> <p>3 Q Yes.</p> <p>4 A That's correct.</p> <p>5 Q We're here now?</p> <p>6 A Yes.</p> <p>7 Q Okay. And you did that for reasons</p> <p>8 sufficient to yourself, correct?</p> <p>9 A Yes.</p> <p>10 Q Okay. But you still want the respondents</p> <p>11 to pay half of the arbitration costs?</p> <p>12 A Yes.</p> <p>13 Q Now, are you aware the painting sold in</p> <p>14 the Sotheby's Old Masters auction on January 27,</p> <p>15 2022, right?</p> <p>16 A Yes.</p> <p>17 Q Okay. Did you watch that auction?</p> <p>18 A No.</p> <p>19 Q No. Are you aware that painting was</p> <p>20 prominently featured on the Sotheby's website?</p> <p>21 A No.</p> <p>22 Q You're aware that the painting was subject</p> <p>23 of a video that put the work alongside the</p> <p>24 Botticelli that sold for \$45 million, right?</p> <p>25 A I -- you're talking about Christie's</p> | <p style="text-align: right;">Page 215</p> <p>1 publicizing the work for sale at auction?</p> <p>2 ARBITRATOR KRAMER: I think he's talking</p> <p>3 about Sotheby's.</p> <p>4 BY MR. PRESS:</p> <p>5 Q I'm talking Sotheby's.</p> <p>6 A I'm sorry, Sotheby's.</p> <p>7 ARBITRATOR KRAMER: On January 23rd.</p> <p>8 THE WITNESS: Yeah, I learned about it</p> <p>9 after the sale.</p> <p>10 BY MR. PRESS:</p> <p>11 Q So you didn't follow that auction?</p> <p>12 A No.</p> <p>13 Q And you don't know how Sotheby's marketed</p> <p>14 the painting at all, do you?</p> <p>15 A No.</p> <p>16 Q You don't know whether it took the paint</p> <p>17 on tour?</p> <p>18 A No.</p> <p>19 Q You don't know about any scholarship</p> <p>20 Sotheby's did on the painting to promote it?</p> <p>21 A No.</p> <p>22 Q Okay. You don't know about -- strike</p> <p>23 that.</p> <p>24 Okay. And are you aware that the -- in</p> <p>25 the auction, the painting sold for a hammer price</p> |
| <p style="text-align: right;">Page 216</p> <p>1 of 1.8 million?</p> <p>2 A I learned about it after the auction.</p> <p>3 Q Okay. Now, you saw earlier today that</p> <p>4 your expert, Winston Art Group, appraised the</p> <p>5 painting in 2019 for 1.5 million; do you recall</p> <p>6 that?</p> <p>7 A Yes.</p> <p>8 Q When is the first time you learned about</p> <p>9 the prior appraisal by Winston Art Group?</p> <p>10 A When my attorney made me aware of it.</p> <p>11 Q Okay. I don't want to get into</p> <p>12 attorney-client communications, but I'd like to</p> <p>13 know the approximate date that you learned about</p> <p>14 it.</p> <p>15 A If you can tell me when the discovery was,</p> <p>16 that's when I learned about it. I think you</p> <p>17 admitted it into discovery, the respondents did.</p> <p>18 I don't know when that was. I've lost track of</p> <p>19 time. We started in May of 2021, we brought the</p> <p>20 claim, and we're here in October of 2022, and you</p> <p>21 did discovery -- discovery was closed after the</p> <p>22 preliminary hearing sometime at the end of 2021, I</p> <p>23 think. I'm just guessing here. It's when you</p> <p>24 brought into discovery, the respondents brought it</p> <p>25 into discovery, that was the date.</p> | <p style="text-align: right;">Page 217</p> <p>1 Q Okay.</p> <p>2 MR. PRESS: Okay. I have no further</p> <p>3 questions.</p> <p>4 MR. NIKAS: Just a few for me.</p> <p>5 R E - R E D I R E C T - E X A M I N A T I O N</p> <p>6 BY MR. NIKAS:</p> <p>7 Q Mr. Greenberg, Mr. Press asked you about</p> <p>8 the fact that you retained Robert Simon well</p> <p>9 before the settlement agreement had been entered</p> <p>10 into.</p> <p>11 Do you recall him asking you that</p> <p>12 question?</p> <p>13 A Yes.</p> <p>14 Q Do you find it problematic as an ethical</p> <p>15 matter that someone you retained in connection</p> <p>16 with this work would show up at a litigation and</p> <p>17 testify against you?</p> <p>18 MR. PRESS: Objection; leading.</p> <p>19 ARBITRATOR KRAMER: Sustained.</p> <p>20 BY MR. NIKAS:</p> <p>21 Q Did Mr. Peck also retain Mr. Simon with?</p> <p>22 A Yes.</p> <p>23 Q Both of you at the same time?</p> <p>24 A Yes.</p> <p>25 Q Did Mr. Peck provide Mr. Simon with any</p> |

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| <p style="text-align: right;">Page 218</p> <p>1 documents about the work?</p> <p>2 ARBITRATOR KRAMER: If you know.</p> <p>3 THE WITNESS: I don't know.</p> <p>4 BY MR. NIKAS:</p> <p>5 Q Now, you said that Mr. Simon saw the work</p> <p>6 of twice, but that he never delivered a final</p> <p>7 report and you became frustrated with the process.</p> <p>8 Do you recall giving that answer?</p> <p>9 A Yes.</p> <p>10 Q Why did you become frustrated with the</p> <p>11 process?</p> <p>12 A So when I was advised by Dr. Simon that</p> <p>13 Diane Modestini wanted the work to go to her lab</p> <p>14 at the university, Mr. Peck was advised, and it</p> <p>15 seemed like I was in a loop. The loop was -- it</p> <p>16 started out that the work was going to be</p> <p>17 delivered to Diane Modestini's laboratory. Okay,</p> <p>18 when? Never showed up. When? Never showed up.</p> <p>19 When? Never showed up. When? I think it was</p> <p>20 three or four months, the work never showed up at</p> <p>21 the laboratory. Got frustrated. Everyone has</p> <p>22 their limit. Three of the four months, when</p> <p>23 someone says something is going to happen in a</p> <p>24 week, I think I was patient enough.</p> <p>25 Q And after that, is that when you turned to</p> | <p style="text-align: right;">Page 219</p> <p>1 Christie's for their view of the work?</p> <p>2 A Yes, I turned to Christie's after that.</p> <p>3 Q Now, in the month leading up to the</p> <p>4 settlement, did you have any reason to doubt that</p> <p>5 the work was in good condition?</p> <p>6 A No.</p> <p>7 Q Now, just one final question. Mr. Press</p> <p>8 asked you about the provision in the agreement,</p> <p>9 1E, that says that if the work is offered for sale</p> <p>10 twice, it doesn't sell, then you get title to the</p> <p>11 work.</p> <p>12 Do you recall him asking you about that</p> <p>13 provision?</p> <p>14 A I do recall that, yes.</p> <p>15 Q Were the respondents required to offer the</p> <p>16 work for sale?</p> <p>17 A Yes.</p> <p>18 Q And in the event that they -- strike that.</p> <p>19 Why didn't they offer the work for sale?</p> <p>20 A Well, as it turns out, the representations</p> <p>21 that the respondent had control and had the</p> <p>22 ability and the right was a lie, and now it's</p> <p>23 seems like they want to take advantage of a lie.</p> <p>24 It doesn't make sense to me.</p> <p>25 MR. NIKAS: I have no further questions.</p> |
| <p style="text-align: right;">Page 220</p> <p>1 MR. PRESS: I'm done.</p> <p>2 ARBITRATOR KRAMER: Thank you, Mr.</p> <p>3 Greenberg. Show we take our afternoon break?</p> <p>4 MR. NIKAS: That's fine.</p> <p>5 (Whereupon, a break was taken at</p> <p>6 3:45 p.m.)</p> <p>7 ARBITRATOR KRAMER: Back on the record.</p> <p>8 Swear in the witness, please.</p> <p>9 I A N P E C K, called as the witness, having been</p> <p>10 duly sworn by a Notary Public, was questioned</p> <p>11 and testified as follows:</p> <p>12 ARBITRATOR KRAMER: State your full name</p> <p>13 for the record, please.</p> <p>14 THE WITNESS: Ian Peck.</p> <p>15 D I R E C T E X A M I N A T I O N</p> <p>16 BY MR. NIKAS:</p> <p>17 Q Mr. Peck, you signed a settlement</p> <p>18 agreement with Mr. Greenberg and various entities,</p> <p>19 correct?</p> <p>20 A Yes.</p> <p>21 Q If you could, please, turn to Tab 1 for</p> <p>22 me. Is that the settlement agreement that you</p> <p>23 signed to resolve your initial dispute with Mr.</p> <p>24 Greenberg and various entities?</p> <p>25 A Yes.</p> | <p style="text-align: right;">Page 221</p> <p>1 Q On pages 9 and 10, do you recognize the</p> <p>2 signatures executed in this agreement?</p> <p>3 A Yes.</p> <p>4 Q And on page 10, are those your signatures?</p> <p>5 A Those are my signatures on behalf of the</p> <p>6 various respondents.</p> <p>7 Q And then the first one is you personally,</p> <p>8 correct?</p> <p>9 A Yes.</p> <p>10 MR. NIKAS: I don't know if we've done</p> <p>11 this yet, but I offer Exhibit 1, the settlement</p> <p>12 agreement into evidence.</p> <p>13 MR. PRESS: Okay.</p> <p>14 ARBITRATOR KRAMER: Received.</p> <p>15 BY MR. NIKAS:</p> <p>16 Q Mr. Peck, Section 1-A-2 gave GB the right</p> <p>17 terminate the agreement in its sole discretion if</p> <p>18 the auctioneer provided a low-end estimate that</p> <p>19 was less than \$4 million; do you see that?</p> <p>20 A I'm sorry. It's one --</p> <p>21 ARBITRATOR KRAMER: And two.</p> <p>22 THE WITNESS: Yes.</p> <p>23 BY MR. NIKAS:</p> <p>24 Q Now, an estimate was never provided for</p> <p>25 this work, correct?</p> |

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| <p style="text-align: right;">Page 222</p> <p>1 A There was never a formal estimate, no.</p> <p>2 Q And that's because it wasn't delivered to</p> <p>3 Christie's for an estimate to be provided,</p> <p>4 correct?</p> <p>5 A Well, I don't know the ultimate reason,</p> <p>6 but there was never an estimate provided.</p> <p>7 Q And 1-A-3 says that ACG had the right to</p> <p>8 pay \$3.6 million at any time within 60 days of</p> <p>9 execution of the agreement, i.e., in advance of</p> <p>10 the auction.</p> <p>11 Do you see that language?</p> <p>12 A Yes.</p> <p>13 Q And ACG never paid that \$3.6 million,</p> <p>14 correct?</p> <p>15 A We've never exercised that provision, no.</p> <p>16 Q Section 1C, it's the waterfall that was to</p> <p>17 be applied for allocating sales proceeds for the</p> <p>18 artwork that was the consideration for this deal,</p> <p>19 right?</p> <p>20 A Yes.</p> <p>21 Q And the waterfall required that the first</p> <p>22 4.15 million of proceeds be paid to GB, correct?</p> <p>23 A I'm sorry, what was the number again?</p> <p>24 Q \$4.15 million.</p> <p>25 A Right, minus the sales -- the ten percent</p> | <p style="text-align: right;">Page 223</p> <p>1 sales expense number.</p> <p>2 Q And there was no sales of the work, right?</p> <p>3 A Not at Christie's, no.</p> <p>4 Q And not under this agreement, right?</p> <p>5 A I don't -- I mean, that's the debatable,</p> <p>6 I think, but it sold at Sotheby's in January</p> <p>7 of 2022.</p> <p>8 Q And the sale expenses that were incurred</p> <p>9 in connection with that auction weren't yours</p> <p>10 under this agreement, right, that somebody else's?</p> <p>11 A I wouldn't concede that, no.</p> <p>12 ARBITRATOR KRAMER: What was your answer,</p> <p>13 please.</p> <p>14 THE WITNESS: I wouldn't concede that. I</p> <p>15 don't agree with that. The expenses -- we</p> <p>16 incurred many expenses related to that effort.</p> <p>17 BY MR. NIKAS:</p> <p>18 Q In connection with the sale of the work</p> <p>19 under this agreement?</p> <p>20 A Well, I'm not sure I understand then what</p> <p>21 you mean by this agreement. Can you clarify that?</p> <p>22 Q Sure. This settlement agreement has a</p> <p>23 waterfall provision that we're looking at right</p> <p>24 now, right?</p> <p>25 A Yes.</p> |
| <p style="text-align: right;">Page 224</p> <p>1 Q And under that waterfall provision, in the</p> <p>2 event the work gets sold, pursuant to this</p> <p>3 agreement, then sales expenses come off the top,</p> <p>4 right?</p> <p>5 A Understood.</p> <p>6 Q And is that never happened?</p> <p>7 A Correct.</p> <p>8 Q The upper limit of this waterfall was --</p> <p>9 threshold in terms of payment or proceeds was</p> <p>10 \$30 million sale would -- above that result in no</p> <p>11 additional payment beyond what had been stated</p> <p>12 before, correct?</p> <p>13 A When you say no "additional payment," what</p> <p>14 do you mean?</p> <p>15 Q Sure. So the waterfall provides that the</p> <p>16 first 4.15 million go to GB, and then it allocates</p> <p>17 sales proceeds from a sale all the way up to</p> <p>18 \$30 million, correct?</p> <p>19 A Yes.</p> <p>20 Q And then it stops?</p> <p>21 A Well, then there's no change to percentage</p> <p>22 splits.</p> <p>23 Q Right. The increase stops as you continue</p> <p>24 to increase?</p> <p>25 A Yes, it's within the ladder.</p> | <p style="text-align: right;">Page 225</p> <p>1 Q And you negotiated this waterfall with</p> <p>2 Mr. Greenberg, correct?</p> <p>3 A And yourself and my counsel, yes.</p> <p>4 Q The principals were you and Mr. Greenberg,</p> <p>5 yes?</p> <p>6 A Yes.</p> <p>7 Q Now, under Section 1E, immediately after</p> <p>8 the waterfall provision it says that if the work</p> <p>9 remains unsold after two efforts then GB has the</p> <p>10 right to permit further sales efforts or take</p> <p>11 unencumbered title to the work; do you see that?</p> <p>12 A Yes.</p> <p>13 Q Now, you were required to make sales</p> <p>14 efforts to try to sell the work under this</p> <p>15 agreement, right?</p> <p>16 A Well, we had to have the work to do sell</p> <p>17 to make those effort, yes.</p> <p>18 Q And you had represented that you had the</p> <p>19 work to sell under Section 6, right?</p> <p>20 A I don't agree with that. I think we</p> <p>21 represented that we were in contract to have the</p> <p>22 work, and then unfortunately our counter-party had</p> <p>23 misrepresented itself and that's the problem.</p> <p>24 Q Well, that's already been subject of a</p> <p>25 summary judgment decision, so I'll simply ask the</p> |

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| <p style="text-align: right;">Page 226</p> <p>1 work was not offered for sale ever by you,</p> <p>2 correct?</p> <p>3 A No.</p> <p>4 Q You did not offer it for sale because you</p> <p>5 did not have it to sell?</p> <p>6 A Well, I had it in contract, and I had the</p> <p>7 right to own it in full and pass title, but I</p> <p>8 never was able to -- I didn't offer it for sale at</p> <p>9 any time during the period here in question.</p> <p>10 Q In fact, when this dispute arose, you</p> <p>11 didn't know where the work was, right?</p> <p>12 A Not precisely, no.</p> <p>13 Q Not precisely? You didn't know</p> <p>14 precisely --</p> <p>15 A Well, I know what I was told. I was told</p> <p>16 where it was, but I don't know if that was</p> <p>17 accurate or not.</p> <p>18 Q Okay. Now, under Section 6A through D,</p> <p>19 you made all those representations in this</p> <p>20 settlement agreement, correct?</p> <p>21 A I'm sorry, where are you?</p> <p>22 Q Sure 6A through D. You made each of these</p> <p>23 representations as part of the settlement, yes?</p> <p>24 A We did, yes.</p> <p>25 Q Now, 6E says the work is an authentic work</p> | <p style="text-align: right;">Page 227</p> <p>1 of art by Andrea del Sarto as described above in</p> <p>2 Section 1A.</p> <p>3 A Yes.</p> <p>4 Q And you made that representation in this</p> <p>5 agreement that you signed?</p> <p>6 A Absolutely.</p> <p>7 Q And Section 1A describes the work as an</p> <p>8 Andrea del Sarto with a title of Ottaviano</p> <p>9 de' Medici, correct?</p> <p>10 A Yes.</p> <p>11 Q And you represented that description was</p> <p>12 accurate, correct?</p> <p>13 A Yes.</p> <p>14 Q Now, Section 13, a dispute resolution</p> <p>15 provision that says the parties shall share</p> <p>16 equally in the cost of such arbitration.</p> <p>17 Do you see that?</p> <p>18 A Yes.</p> <p>19 Q And you have not paid any costs of this</p> <p>20 arbitration, correct?</p> <p>21 A It gets into conversations I've had with</p> <p>22 my counsel, but the answer is no, we have not.</p> <p>23 Q You didn't pay JAMS anything, right?</p> <p>24 A The respondents have not paid JAMS yet.</p> <p>25 Q You said yet. As of right now, you</p> |
| <p style="text-align: right;">Page 228</p> <p>1 haven't paid a dollar to JAMS?</p> <p>2 A That's correct.</p> <p>3 Q Now, I want to talk about the del Sarto</p> <p>4 that you represented was accurate and authentic as</p> <p>5 described in Section 1A.</p> <p>6 MR. PRESS: Objection to form.</p> <p>7 ARBITRATOR KRAMER: Mr. Nikas, move on to</p> <p>8 the next question.</p> <p>9 BY MR. NIKAS:</p> <p>10 Q You represented that the work was not</p> <p>11 subject to any claims or rights, potential or</p> <p>12 threatened, that could prevent you from performing</p> <p>13 your obligation under this agreement, correct?</p> <p>14 A Yes.</p> <p>15 Q Now, after this settlement agreement was</p> <p>16 signed, you engaged an individual named Nicholas</p> <p>17 Hall, correct?</p> <p>18 A Yes.</p> <p>19 Q Now, you did that around March of 2021,</p> <p>20 right?</p> <p>21 A We started conversations with Nicholas</p> <p>22 Hall in January of 2021.</p> <p>23 Q If you could turn to Exhibit 16 in your</p> <p>24 binder for me.</p> <p>25 Are you there, Mr. Peck?</p> | <p style="text-align: right;">Page 229</p> <p>1 A Yes.</p> <p>2 Q This is the engagement letter, consulting</p> <p>3 agreement that you entered into with Nicholas</p> <p>4 Hall?</p> <p>5 A Yes, I believe so.</p> <p>6 Q And you entered into this agreement before</p> <p>7 you were sued in this arbitration, correct?</p> <p>8 A I don't recall the precise dates when this</p> <p>9 arbitration commenced, but my recollection was</p> <p>10 that it was earlier than this or just about the</p> <p>11 same time.</p> <p>12 ARBITRATOR KRAMER: Why don't you</p> <p>13 represent when the arbitration started.</p> <p>14 BY MR. NIKAS:</p> <p>15 Q The arbitration started on you April 29,</p> <p>16 2021, to give you an exact date.</p> <p>17 A Okay. That sounds about right.</p> <p>18 Q So you engaged him before the arbitration</p> <p>19 started, correct?</p> <p>20 A Yes.</p> <p>21 MR. NIKAS: Now, I'd like to offer Exhibit</p> <p>22 16, Mr. Hall's consulting agreement.</p> <p>23 MR. PRESS: I'm just going to object</p> <p>24 because I don't see how this is related to</p> <p>25 damages. I think we are having a damages hearing.</p> |

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| <p style="text-align: right;">Page 230</p> <p>1 I mean, if you want to open up the question of</p> <p>2 liability, I'm absolutely open to it.</p> <p>3 ARBITRATOR KRAMER: Let's just find out</p> <p>4 where we're going.</p> <p>5 MR. PRESS: Okay.</p> <p>6 MR. NIKAS: I'll connect it directly to</p> <p>7 damage, sir.</p> <p>8 BY MR. NIKAS:</p> <p>9 Q Mr. Peck, in this consulting agreement you</p> <p>10 agreed to pay Mr. Hall five percent of the net</p> <p>11 profit of the sale up to a sales price of \$10</p> <p>12 million, correct?</p> <p>13 A Yes.</p> <p>14 Q Three percent of the net profit from the</p> <p>15 sale price between ten to \$15 million, correct?</p> <p>16 A Yes.</p> <p>17 Q And two percent net of the sale profit</p> <p>18 above a sale price of \$15 million, correct?</p> <p>19 A Yes.</p> <p>20 Q Now, when entering into this engagement</p> <p>21 with Mr. Hall, you believed at the time that he</p> <p>22 was one of the world's most significant experts in</p> <p>23 Old Master work?</p> <p>24 A Well, Nicholas Hall is considered one of</p> <p>25 the top experts, and particularly with this type</p> | <p style="text-align: right;">Page 231</p> <p>1 of a situation, which is what we wanted him for,</p> <p>2 which was to help us negotiate with the auction</p> <p>3 house or make another recommendation as to what</p> <p>4 the best course of action would be to get the most</p> <p>5 value out of the painting.</p> <p>6 Q Okay. Now, you and Mr. Hall then talked</p> <p>7 about the del Sarto, right?</p> <p>8 A Yes.</p> <p>9 Q And Mr. Hall told you that he liked the</p> <p>10 work, right?</p> <p>11 A Well, he liked the name, and I think he</p> <p>12 liked the image of the work, but he, like others,</p> <p>13 wanted to get more details about the condition and</p> <p>14 background of the piece.</p> <p>15 Q Okay. But he told you that he likes the</p> <p>16 work, right?</p> <p>17 A Yes.</p> <p>18 Q And, in fact, your lawyer on your behalf</p> <p>19 represented that to the respondents in writing,</p> <p>20 right?</p> <p>21 ARBITRATOR KRAMER: To whom? To the</p> <p>22 respondents?</p> <p>23 MR. NIKAS: To respondents that Mr. Hall</p> <p>24 like the work.</p> <p>25 MR. PRESS: Objection.</p> |
| <p style="text-align: right;">Page 232</p> <p>1 ARBITRATOR KRAMER: I'm not sure I</p> <p>2 understand the question.</p> <p>3 MR. NIKAS: Sure.</p> <p>4 ARBITRATOR KRAMER: The question is</p> <p>5 whether Mr. Hall --</p> <p>6 MR. NIKAS: I said did Mr. Hall tell you</p> <p>7 he liked the work, and then he said yes. And I</p> <p>8 said, in fact, your counsel represented to us that</p> <p>9 Mr. Hall liked the work.</p> <p>10 ARBITRATOR KRAMER: You said "respondent."</p> <p>11 You're a claimant.</p> <p>12 THE WITNESS: Mr. Hall liked the work.</p> <p>13 BY MR. NIKAS:</p> <p>14 Q Now --</p> <p>15 A He hadn't seen the work in person.</p> <p>16 Q He hadn't seen it in person?</p> <p>17 A No.</p> <p>18 Q And based on what Mr. Hall knew about the</p> <p>19 work that you had told him, you and Mr. Hall</p> <p>20 discussed the value of the work, correct?</p> <p>21 A Well, we discussed the potential of value</p> <p>22 if a certain course of action was taken. He felt,</p> <p>23 as you know from his letter, very strongly that</p> <p>24 the April Christie's sale was not a place where</p> <p>25 the painting should go. He felt it was a very</p> | <p style="text-align: right;">Page 233</p> <p>1 minor sale and that the result would be bad for</p> <p>2 the painting. And he recommended, as did Robert</p> <p>3 Simon, a different course, which was to have the</p> <p>4 piece sent to Italy, restored by one of the top</p> <p>5 restorers in the world and re-present it to the</p> <p>6 marketplace with additional scholarship, articles</p> <p>7 written, possibly getting in an museum, a</p> <p>8 multiple-year strategy to get to a point where you</p> <p>9 can sell it to an important collector for a bigger</p> <p>10 number.</p> <p>11 Q In the course of the conversations before</p> <p>12 or in March of 2021, Mr. Hall had told you a</p> <p>13 specific range of value he thought for this work,</p> <p>14 correct?</p> <p>15 A Well, he said if the condition is very</p> <p>16 good that the numbers could be, you know, in the</p> <p>17 three, four, five million range, or more. If it</p> <p>18 was mediocre or bad, it would be less. So he was</p> <p>19 quite clear about that.</p> <p>20 Q So you said Mr. Hall told you three, four,</p> <p>21 five million, that was the specific range that we</p> <p>22 talked about?</p> <p>23 A If the piece was in, you know, phenomenal</p> <p>24 condition.</p> <p>25 Q So after you consulted with Mr. Hall in</p> |

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| <p style="text-align: right;">Page 234</p> <p>1 March of 2021, you gave testimony in a preliminary</p> <p>2 injunction hearing, correct.</p> <p>3 A Yes.</p> <p>4 Q And that testimony came after you</p> <p>5 consulted with Mr. Hall about the range of values</p> <p>6 for the work, correct?</p> <p>7 A Yes.</p> <p>8 Q And in your testimony after consulting</p> <p>9 with Mr. Hall about the range of values for the</p> <p>10 work, you testified that the range of value was</p> <p>11 ten to 15 million, correct?</p> <p>12 A If this course of action was adopted, yes,</p> <p>13 potentially. It's a potential. It's not a</p> <p>14 guarantee, if you know what I mean. I mean, you</p> <p>15 could put a painting at auction and say, yes,</p> <p>16 well, it's one to \$3 million. You could hit a</p> <p>17 home run and it sells for ten, you know. The</p> <p>18 point is it's not an exact science, right. I</p> <p>19 mean, the market is going to determine the value</p> <p>20 ultimately.</p> <p>21 Q And the value that you gave under oath to</p> <p>22 the arbitrator in this case was ten to</p> <p>23 \$15 million, correct?</p> <p>24 MR. PRESS: I'm going to object. This</p> <p>25 misrepresents the transcript.</p> | <p style="text-align: right;">Page 235</p> <p>1 ARBITRATOR KRAMER: Show him the</p> <p>2 transcript.</p> <p>3 MR. PRESS: And when you hear this,</p> <p>4 Mr. Arbitrator, I really think that you should</p> <p>5 admonish the claimant to not leave out the</p> <p>6 important language from the testimony.</p> <p>7 ARBITRATOR KRAMER: Well, that's why we're</p> <p>8 going to show the transcript, and then you have an</p> <p>9 opportunity to show if it's accurate under your</p> <p>10 examination.</p> <p>11 MR. NIKAS: Page 278.</p> <p>12 ARBITRATOR KRAMER: Does Mr. Peck have it?</p> <p>13 MR. NIKAS: It's on Exhibit 5.</p> <p>14 ARBITRATOR KRAMER: Page number?</p> <p>15 MR. NIKAS: It's 278.</p> <p>16 THE WITNESS: Okay.</p> <p>17 BY MR. NIKAS:</p> <p>18 Q You were asked about your conversation</p> <p>19 with Mr. Hall:</p> <p>20 "QUESTION: He had no idea at that point</p> <p>21 what the specific value of the work was, correct?</p> <p>22 "ANSWER: To the extent that there's a</p> <p>23 specific value, he had a range of what he thought</p> <p>24 would work, yes.</p> <p>25 "QUESTION: But he didn't know what the</p> |
| <p style="text-align: right;">Page 236</p> <p>1 real number was as he later puts it in an e-mail,</p> <p>2 correct?</p> <p>3 "ANSWER: He gave us a range of value as</p> <p>4 it was dependent on several factors."</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q You gave that testimony. And the several</p> <p>8 factors were the ones you just referenced earlier,</p> <p>9 right?</p> <p>10 A Yes.</p> <p>11 Q Now, go to Exhibit 6, page 73. Your</p> <p>12 counsel asks you, page 73, line 19:</p> <p>13 "QUESTION: And what do you believe the</p> <p>14 painting might be worth?</p> <p>15 "ANSWER: I believe the painting could be</p> <p>16 worth somewhere around the ten to \$15 million if</p> <p>17 it's properly handled."</p> <p>18 Do you see that?</p> <p>19 A Yes.</p> <p>20 Q And by properly handled you're referring</p> <p>21 to the various activities that you described a</p> <p>22 moment ago, yes?</p> <p>23 A The multi-year plan that the experts were</p> <p>24 recommending.</p> <p>25 Q And Mr. Hall wrote that it should be</p> | <p style="text-align: right;">Page 237</p> <p>1 offered in the fall, right?</p> <p>2 A Well, he said that if you had to auction</p> <p>3 it, he was recommending that you at least wait</p> <p>4 until the next important auction, which would have</p> <p>5 been -- I think would have been Sotheby's,</p> <p>6 actually.</p> <p>7 Q Now, when you gave this testimony you knew</p> <p>8 that the claimants had pursued a lawsuit that was</p> <p>9 seeking damages against you, correct?</p> <p>10 A I don't understand the question.</p> <p>11 Q Sure. You were testifying in an</p> <p>12 arbitration proceeding, you understood that,</p> <p>13 right?</p> <p>14 A Yes.</p> <p>15 Q And you understood that that arbitration</p> <p>16 proceeding had been initiated by an arbitration</p> <p>17 demand filed by the claimants?</p> <p>18 A Yes.</p> <p>19 Q And you understood that that arbitration</p> <p>20 demand requested damages for the breaches it</p> <p>21 alleged you had committed under the settlement</p> <p>22 agreement, right?</p> <p>23 A Yes.</p> <p>24 Q And that arbitration demand sought damages</p> <p>25 in connection with those breaches, that would be</p> |

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| <p style="text-align: right;">Page 238</p> <p>1 subject to a trial, yes?</p> <p>2 A Yes.</p> <p>3 Q And at the time you gave that testimony</p> <p>4 you knew that the core question would be what</p> <p>5 damages were incurred as a result of the failure</p> <p>6 to sell this work, right?</p> <p>7 A Well, I wouldn't have known that</p> <p>8 necessarily.</p> <p>9 Q Your counsel took that position in the</p> <p>10 preliminary injunction proceeding, are you aware</p> <p>11 of that?</p> <p>12 A You're asking if I knew that this trial</p> <p>13 would ultimately be about damages, how could I</p> <p>14 know that? I mean...</p> <p>15 Q Do you recall at the arbitration your</p> <p>16 counsel at the preliminary injunction of this</p> <p>17 arbitration, where your counsel took the position</p> <p>18 that the claimants were seeking essentially money</p> <p>19 damages because this contract is for the payment</p> <p>20 of a sum of money in various forms?</p> <p>21 A I don't recall that specifically, no.</p> <p>22 Q So when you gave the testimony that the</p> <p>23 value of the work could be between ten to 15</p> <p>24 million if it were properly handled, in fact, you</p> <p>25 had an incentive to decrease that number because</p> | <p style="text-align: right;">Page 239</p> <p>1 you weren't in arbitration where the value of the</p> <p>2 work was the amount of damages, right?</p> <p>3 A Well, no. We very much wanted to complete</p> <p>4 our contract and close. We were prevented from</p> <p>5 doing so by the preliminary injunction, but we had</p> <p>6 property incentive per the waterfall to -- we</p> <p>7 could have done very well if the painting sold for</p> <p>8 a lot of money.</p> <p>9 Q And when you testified that it was --</p> <p>10 could be worth ten to \$15 million if properly</p> <p>11 handled, you were telling the truth?</p> <p>12 A Well, I was saying what several experts</p> <p>13 had told me at that point if we followed a very</p> <p>14 specific course of action, which did not involve</p> <p>15 the auctions then we could achieve that result;</p> <p>16 that's what they were saying.</p> <p>17 Now, again, it was still speculative as</p> <p>18 to -- no one was guaranteeing what the results</p> <p>19 were going to be, and no one knows for sure. This</p> <p>20 is a very rarified area of the market.</p> <p>21 Q You could never be sure, but you were</p> <p>22 hearing to ten to 15 was a possibility?</p> <p>23 A Other less than one if things went in a</p> <p>24 different direction. For example, they wanted to</p> <p>25 send this to a specific restoration studio in</p> |
| <p style="text-align: right;">Page 240</p> <p>1 Italy that has done work on Leonardo da Vinci and</p> <p>2 other major works. And what the restorers would</p> <p>3 do, and I'm not a restorer, but I've worked with</p> <p>4 many, is they would have taken the picture back</p> <p>5 down to the original, you know, state, similar to</p> <p>6 the picture that you saw, and then they would have</p> <p>7 redone the whole thing, to fix whatever problems</p> <p>8 there were with the restoration. That's a process</p> <p>9 that could take a year or a year and a half, and</p> <p>10 you don't know what you're going to find when you</p> <p>11 take the paint layers off. There could be other</p> <p>12 problems that people didn't realize.</p> <p>13 So it is all speculative, but that was the</p> <p>14 advice we were getting at that time from Nick</p> <p>15 Hall, Robert Simon, and others.</p> <p>16 Q So it's speculative, but ten to \$15</p> <p>17 million was a range that was reasonable --</p> <p>18 A I would call that the home run scenario if</p> <p>19 you took this multi-year plan, yes.</p> <p>20 Q And the reason none of the multi-year plan</p> <p>21 components happened is because you didn't own the</p> <p>22 work and you couldn't offer it, correct?</p> <p>23 A No. I couldn't close on the work because</p> <p>24 the preliminary injunction prevented me from doing</p> <p>25 so, the company rather. And as you can see from</p> | <p style="text-align: right;">Page 241</p> <p>1 the litigation we had with Virginia Bonito, we</p> <p>2 clearly had rights to purchase the work. We had a</p> <p>3 lien on the work. We had everything needed to</p> <p>4 deliver -- to close and deliver on the work, but</p> <p>5 at the moment that we were trying to do that, we</p> <p>6 were restrained from doing that.</p> <p>7 Q Do you recall -- you didn't own the work;</p> <p>8 isn't that true, sir?</p> <p>9 A Well, no. We owned a portion of the work</p> <p>10 at that time, and we had the contractual right to</p> <p>11 own the entire work. We were trying to close on</p> <p>12 that, and we were up front with Gary and</p> <p>13 Christie's about that. The record shows that.</p> <p>14 Q You didn't have the work in your</p> <p>15 possession, correct?</p> <p>16 A We always said we had to get it delivered,</p> <p>17 and that's where the problem occurred.</p> <p>18 Q The reason this multi-year plan didn't</p> <p>19 happen is because you breached the provisions in</p> <p>20 the settlement agreement under which you</p> <p>21 represented that the work was not subject to any</p> <p>22 claims, threatened claims or other interests or</p> <p>23 contracts that you were violating by entering this</p> <p>24 agreement?</p> <p>25 MR. PRESS: Objection.</p> |


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| <p style="text-align: right;">Page 242</p> <p>1 THE WITNESS: We relied on a counter-party</p> <p>2 that we had a contractual relationship with, and</p> <p>3 that counter-party breached certain</p> <p>4 representations, and that's what happened, so...</p> <p>5 ARBITRATOR KRAMER: Did you at that time</p> <p>6 own a percentage of the painting?</p> <p>7 THE WITNESS: Yeah. We had a pro rata</p> <p>8 share.</p> <p>9 ARBITRATOR KRAMER: Which was documented</p> <p>10 how?</p> <p>11 THE WITNESS: In an agreement. When we</p> <p>12 advanced money against the purchase -- so we had a</p> <p>13 purchase agreement and a right to purchase the</p> <p>14 entire work, we had advanced deposits along the</p> <p>15 way against the purchase price, and there's a lien</p> <p>16 that was filed that captured, you know, as a</p> <p>17 right, and also language in the agreement that</p> <p>18 said we were pro rata owner.</p> <p>19 MR. NIKAS: And Mr. Kramer, this is the</p> <p>20 subject. Two things, number one, there's a</p> <p>21 summary judgment decision, and number two, that</p> <p>22 was an unsigned agreement that Arbitrator Francis</p> <p>23 reviewed and found no evidence --</p> <p>24 MR. PRESS: Are you testifying?</p> <p>25 ARBITRATOR KRAMER: Agreed. Let's --</p> | <p style="text-align: right;">Page 243</p> <p>1 MR. NIKAS: I'm talking about the subject</p> <p>2 of the decision.</p> <p>3 ARBITRATOR KRAMER: Let's move on.</p> <p>4 BY MR. NIKAS:</p> <p>5 Q Mr. Peck, you didn't ultimately undertake</p> <p>6 the plan that your own experts told you needed to</p> <p>7 be undertaken for this work, right?</p> <p>8 A We were unable to.</p> <p>9 Q You didn't; isn't that right?</p> <p>10 A No, we didn't.</p> <p>11 Q And that has nothing to do with Gary</p> <p>12 Greenberg breaching this agreement, correct?</p> <p>13 There's been no finding of breach against him?</p> <p>14 A Look, I'm not a lawyer, but I'm just</p> <p>15 saying it's a practical matter. We couldn't</p> <p>16 complete our side of the transaction with a</p> <p>17 preliminary injunction in place.</p> <p>18 Q That had all been resolved before. You</p> <p>19 mentioned the lawsuit. You sued Bonito three days</p> <p>20 before the work was sold to Sotheby's, correct?</p> <p>21 A The company that was in contract with her</p> <p>22 as seller, Empire Chesapeake, for example, was the</p> <p>23 buyer, and Chelsea Arts Holdings was the buyer,</p> <p>24 they both had certain contractual rights, and they</p> <p>25 brought an action just, you know, a day or tow</p> |
| <p style="text-align: right;">Page 244</p> <p>1 before the Sotheby's auction.</p> <p>2 Q You were the one that signed the</p> <p>3 verification for that complaint, correct?</p> <p>4 A Yes.</p> <p>5 Q And in that complaint you alleged that</p> <p>6 Sotheby's had no right to sell the work, correct?</p> <p>7 A Well, I think we alleged -- I'd have to</p> <p>8 see the complaint to know verbatim.</p> <p>9 MR. PRESS: Why don't you show him the</p> <p>10 complaint.</p> <p>11 MR. NIKAS: If I could conduct the</p> <p>12 examination.</p> <p>13 ARBITRATOR KRAMER: Maintain nice for most</p> <p>14 of the day.</p> <p>15 THE WITNESS: So your question again,</p> <p>16 please.</p> <p>17 BY MR. NIKAS:</p> <p>18 Q Sure. In the complaint you alleged that</p> <p>19 Sotheby's had no right to sell the work, correct?</p> <p>20 A I said that there was a -- that we had</p> <p>21 certain rights, or the company had that was in</p> <p>22 contract with the seller had certain rights that</p> <p>23 were being trampled, yes.</p> <p>24 Q And that Sotheby's did not have right to</p> <p>25 sell the work, right?</p> | <p style="text-align: right;">Page 245</p> <p>1 ARBITRATOR KRAMER: Does it say that in</p> <p>2 the complaint?</p> <p>3 MR. NIKAS: It does.</p> <p>4 ARBITRATOR KRAMER: Okay. Do you recall</p> <p>5 where it specifically said that Sotheby's doesn't</p> <p>6 have the right --</p> <p>7 THE WITNESS: In sum or substance we were</p> <p>8 saying Sotheby's -- guys, we're over here. You</p> <p>9 can't sell it without out rights being protected.</p> <p>10 BY MR. NIKAS:</p> <p>11 Q So let's look at the complaint then. It's</p> <p>12 Exhibit 7. Go to the last page of the document</p> <p>13 first, please.</p> <p>14 That's your signature on the verification</p> <p>15 for the complaint?</p> <p>16 A Yes.</p> <p>17 Q And if you'll go back one page, that's</p> <p>18 your counsel, Mr. Press, signing the complaint,</p> <p>19 correct?</p> <p>20 A Yes.</p> <p>21 Q Now, if you go to the beginning of the</p> <p>22 complaint, it's on page 3 of 23 at the bottom</p> <p>23 right-hand corner. Empire Chesapeake Holdings and</p> <p>24 Chelsea Art Holdings; do you see that?</p> <p>25 A Yes.</p> |

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| <p style="text-align: right;">Page 246</p> <p>1 Q Against Virginia Anne Bonito and Bottom</p> <p>2 Line Exchange Company?</p> <p>3 A Yes.</p> <p>4 Q Now, you're a director, and had some</p> <p>5 interest in the two plaintiff's; is that right?</p> <p>6 A Director, yes.</p> <p>7 Q And you authorized the filing of this</p> <p>8 verified complaint?</p> <p>9 A Yes.</p> <p>10 Q And your verification verified that to</p> <p>11 your knowledge it was an accurate complaint,</p> <p>12 right, it was truthful?</p> <p>13 A Yes.</p> <p>14 Q All right. Now, paragraph 5 on page 5 of</p> <p>15 23, states that in October or November of 2021,</p> <p>16 you put Bonito, Bottom Line, and Sotheby's on</p> <p>17 notice of your alleged claims and rights, correct?</p> <p>18 A Yes.</p> <p>19 Q And it further alleges that you had liens</p> <p>20 against the painting and right of first refusal,</p> <p>21 right?</p> <p>22 A Yes.</p> <p>23 Q And you accused Bonito and Bottom of</p> <p>24 pretending or hoping to sell the painting and</p> <p>25 abscond the proceeds?</p> | <p style="text-align: right;">Page 247</p> <p>1 A Well, not only the right of first refusal,</p> <p>2 but we also have the exclusive right to purchase</p> <p>3 the painting.</p> <p>4 Q Okay. You alleged that in paragraph 5?</p> <p>5 A Yes.</p> <p>6 Q And you put this in a public document</p> <p>7 filed in New York Supreme Court?</p> <p>8 A It was filed, yes.</p> <p>9 Q Now, if you'll, please, go to</p> <p>10 paragraph 52, a letter dated November 29, 2021.</p> <p>11 Do you see that paragraph? Let me know</p> <p>12 when you're there.</p> <p>13 A Yes, okay.</p> <p>14 Q It references a letter that you sent to</p> <p>15 Sotheby's on November 29, 2021; do you see that?</p> <p>16 A Yes.</p> <p>17 Q And in that November 29, 2021, letter to</p> <p>18 Sotheby's, you wrote, in 2020 and 2021, Empire</p> <p>19 Chesapeake advanced certain amounts to Virginia</p> <p>20 Bonito towards the purchase of the work, and</p> <p>21 incurred certain expenses. The amounts are</p> <p>22 secured by the attached UCC lien on the work as</p> <p>23 part of the agreement based upon the amounts</p> <p>24 already advanced. Ms. Bonito granted Empire</p> <p>25 Chesapeake a pro rata direct ownership interest,</p> |
| <p style="text-align: right;">Page 248</p> <p>1 and you continue on describing your alleged</p> <p>2 interest in the work. And then you say in the</p> <p>3 last paragraph that you objected to Sotheby's sale</p> <p>4 of the work in any auction or private transaction,</p> <p>5 right?</p> <p>6 A Well, we object until our rights are taken</p> <p>7 into account.</p> <p>8 Q Now, you have experience in the art world,</p> <p>9 correct?</p> <p>10 A Some.</p> <p>11 Q You worked at Christie's?</p> <p>12 A I worked at Sotheby's.</p> <p>13 Q You were the master of fine art at</p> <p>14 Christie's?</p> <p>15 A Yes.</p> <p>16 Q And you have some experience in the Old</p> <p>17 Masters department at Sotheby's; is that right?</p> <p>18 A Yes.</p> <p>19 Q Now, from your experience in the art world</p> <p>20 you know that in essence what you're saying is I</p> <p>21 own this work, or at least a right to it, and</p> <p>22 Sotheby's can't sell it, right?</p> <p>23 A Well, look, first of all, Sotheby's</p> <p>24 guarantees title when it sells something at</p> <p>25 auction. They guarantee authenticity as well, so</p> | <p style="text-align: right;">Page 249</p> <p>1 they have to be sure if there's any doubt or</p> <p>2 dispute or if anyone raises a question, they have</p> <p>3 to run that ground. All we were doing was saying</p> <p>4 we're getting ignored by our counter-party</p> <p>5 contractually, you're about to sell something</p> <p>6 where there is a legitimate claim from a</p> <p>7 third-party, that's us, and that's all we said.</p> <p>8 Q And in other words, they don't have a</p> <p>9 right to sell it when your claim isn't being</p> <p>10 respected?</p> <p>11 A Well, you know, obviously, you know, when</p> <p>12 I was working at the auction house, I saw things</p> <p>13 that were sold, and then subsequently there were</p> <p>14 claims on that. But if the claim is made aware to</p> <p>15 them ahead of time, then they have to deal with</p> <p>16 it.</p> <p>17 Q And wouldn't you agree that dealing with a</p> <p>18 claim on title, lien on title like this, it'd make</p> <p>19 it hard for a seller to sell a work in the wake of</p> <p>20 an allegation like that?</p> <p>21 A Well, I think the public -- the buying</p> <p>22 public would be relying on Sotheby's to do what</p> <p>23 they did, which was to run it to ground and ensure</p> <p>24 that when they did sell the work that it was free</p> <p>25 and clear, and that their representations that it</p> |

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| <p style="text-align: right;">Page 250</p> <p>1 was free and clear were true.</p> <p>2 Q But don't you think it would be hard for a</p> <p>3 seller to sell a work at maximum price when you're</p> <p>4 claiming that someone else owes you these</p> <p>5 obligations?</p> <p>6 A Not necessarily, no.</p> <p>7 Q Do you remember in your preliminary</p> <p>8 injunction testimony being asked the following</p> <p>9 questions, on page 208, and you can follow along,</p> <p>10 Exhibit 5. Question on line 10, tell me with</p> <p>11 you're there.</p> <p>12 A Page 208?</p> <p>13 Q 208.</p> <p>14 A Okay.</p> <p>15 Q Line 10, you were asked:</p> <p>16 "QUESTION: So if you closed on the work</p> <p>17 today under the terms of the documents your lawyer</p> <p>18 has presented to this tribunal, is it your</p> <p>19 testimony you can consign the work for sale?</p> <p>20 You answered: If we were able to</p> <p>21 successfully close on the work, then we could</p> <p>22 potentially consign it for sale.</p> <p>23 "QUESTION: If you don't close on the</p> <p>24 work, then the owner could sell the work to</p> <p>25 someone else, correct?</p> | <p style="text-align: right;">Page 251</p> <p>1 "ANSWER: Well, they would have a hard</p> <p>2 time doing that because of the obligations they</p> <p>3 have to our company."</p> <p>4 Do you see that?</p> <p>5 A Yes.</p> <p>6 Q And do you agree with that answer that you</p> <p>7 gave?</p> <p>8 A I do.</p> <p>9 Q Okay.</p> <p>10 MR. NIKAS: I have no further questions.</p> <p>11 MR. PRESS: All right. I don't have any</p> <p>12 questions in redirect.</p> <p>13 ARBITRATOR KRAMER: Right.</p> <p>14 MR. PRESS: Now, I do have Mr. Peck as a</p> <p>15 witness of mine, but I think at this point, you</p> <p>16 know, it's almost five o'clock, and I prefer to</p> <p>17 just do him tomorrow.</p> <p>18 ARBITRATOR KRAMER: That means tomorrow we</p> <p>19 would have Mr. Peck for how much time.</p> <p>20 MR. PRESS: So what I would probably do</p> <p>21 is, I'd really want to get Mr. Simon in and out,</p> <p>22 who's tired, so let's not do that now. So I</p> <p>23 suggest we do Mr. Simon, and Mr. Peck is stuck</p> <p>24 here anyway, so we would just do him afterwards.</p> <p>25 I don't have -- it's a hard to say. I have</p> |
| <p style="text-align: right;">Page 252</p> <p>1 some -- I have more -- I think I have more with</p> <p>2 Mr. Peck than -- and you would have time for with</p> <p>3 cross and redirect. That's why I was suggesting</p> <p>4 it.</p> <p>5 ARBITRATOR KRAMER: So we're starting at</p> <p>6 9:30 tomorrow morning with Dr. Simon?</p> <p>7 MR. PRESS: That would be my suggestion.</p> <p>8 ARBITRATOR KRAMER: Any objection to that</p> <p>9 schedule?</p> <p>10 MR. NIKAS: No. The only request that I'd</p> <p>11 make is that because Mr. Peck has just giving</p> <p>12 testimony that he not be allowed to confer with</p> <p>13 Mr. Press about his testimony he's going to be</p> <p>14 giving.</p> <p>15 ARBITRATOR KRAMER: Sure. I'm sure</p> <p>16 Mr. Press knows his ethical obligations.</p> <p>17 MR. PRESS: I'm happy to not talk to</p> <p>18 Mr. Peck about it. I may have to talk to him</p> <p>19 about some other things, but I will not discuss</p> <p>20 this --</p> <p>21 ARBITRATOR KRAMER: I always assume that</p> <p>22 the lawyers do right thing.</p> <p>23 You can go off the record.</p> <p>24 (Whereupon, the proceedings concluded at</p> <p>25 4:46 p.m.)</p> | <p style="text-align: right;">Page 253</p> <p>1 --00000--</p> <p>2</p> <p>3</p> <p>4 C E R T I F I C A T E</p> <p>5</p> <p>6 I, Leonora L. Walker, a Notary Public, the</p> <p>7 officer before whom the foregoing deposition was</p> <p>8 taken, do hereby certify that the foregoing</p> <p>9 transcript is a true and correct record of the</p> <p>10 testimony given; that said testimony was taken by</p> <p>11 me stenographically and thereafter reduced to</p> <p>12 typewriting under my supervision; that reading and</p> <p>13 signing was not requested; and that I am neither</p> <p>14 counsel for or related to, nor employed by any of</p> <p>15 the parties to this case and have no interest,</p> <p>16 financial or otherwise, in its outcome.</p> <p>17 IN WITNESS WHEREOF, I have hereunto set my</p> <p>18 hand and affixed my notarial seal this 26th day of</p> <p>19 October 2022.</p> <p>20 My commission expires May 17, 2024.</p> <p>21</p> <p>22 </p> <p>23 NOTARY PUBLIC IN AND FOR THE</p> <p>24 STATE OF NEW YORK</p> <p>25 Notary Registration No. 01WA6109670</p> |